

Hindu Code Bill (Clause by Clause Discussion)

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HINDU CODE—*contd.*

Mr. Deputy Speaker: The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Yesterday we disposed of Clause 2 ; the major contentious clause is over. I hope the other clauses will be passed quickly.

Clause 3.—(*Definitions*)

The Minister of Law (Dr. Ambedkar): I beg to move: In clause 3,—

(i) for the words " unless there is anything repugnant in the subject or context " substitute " unless the context otherwise requires " ;

(ii) renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv), (v) and insert the following as item (i), namely:

' (i) " Aliyasantana law ' means the system of law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949) ; ' ;

(iii) in term (iii), as so renumbered, omit " except in sections 41 and 49 " ;

(iv) in the *Explanation* to item (v), as so renumbered, for " this clause " substitute " clause (iv) and (v) " ;

(v) renumber the existing items (v), (vi), (vii) and (viii) as items (viii), (ix), (x) and (xi) and insert, the following as items (vi) and (vii) namely:

' (vi) " Marumakkattayam law " means the system of law applicable to persons—

(a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act, II of 1100, the Travancore Ezhava Act, III of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107 ; the Cochin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113 or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore Cochin or Madras, and who, if this Code had not been passed, would have been governed by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law;

(vii) " Nambudri law " means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106);

(vi) in item (viii) as so renumbered, for " any " substitute " a ".

Shri Naziruddin Ahmad (West Bengal): I think that it would be better to proceed seriatim, sub-clause by sub-clause, and subject by subject. Otherwise, the difficulty would be that the debate would be of too general a nature. In clause 2 the debate was much of a general nature because we did not consider individual items or groups.

Mr. Deputy Speaker : I agree, I shall proceed in the order in which they have been noted in the order Paper.

Dr. Ambedkar: My amendment is so to say in two parts. Item I of my amendment is merely a verbal change. It has been pointed out to me that the words that are used in the existing clause " unless there is anything repugnant in the subject or context " are not in consonance with the language which we have been using since the passing of the Constitution, the Constitution uses the phraseology " unless the context otherwise requires " and in order to bring the language of this Bill in consonance with the language of the Constitution, I am making that particular amendment, it is merely a change of words.

With regard to the other amendments, they are necessary because it has now been proposed that the marriage and divorce law should also apply to persons who are governed by the Marmuakkattayam and Aliyasantana law. As the subsequent sections deal with that aspect of the matter, it is necessary to enlarge the definition clause so that necessary definitions which relate to that matter may be brought in and the definition clause be made complete.

Mr. Deputy Speaker: amendment moved : In clause 3,—

(i) for the words " unless there is anything repugnant in the subject or context " substitute " unless the context otherwise requires ";

(ii) renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv) and (v), and insert the following as item (i), namely:

(i) " Aliyasantana law ", means the system of law applicable to persons who, if this Code had not been passed, would have been

governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);

(iii) in item (iii), as so renumbered, omit "except in sections 44 and 49";

(iv) in the *Explanation* to item (v), as so renumbered, for " this clause " substitute " clauses (iv) and (v) " ;

(v) renumber the existing items (v), (vi), (vii) and (viii) as items (viii), (ix), (x) and (xi), and insert the following as items (vi) and (vii), namely:

(vi) " Marumakkattayam law " means the system of law applicable to persons—

(a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act, XXII of 1933), the Travancore Nair Act, II of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107, the Cochin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113, or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras, and who, if this code had not been passed, would have been governed by any system of inheritance in which descent is traced through the female line;

but does not include the Aliyasantana law; (vii) ' Nambudri law ' means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106);

(vi) in item (viii) as so renumbered, for " any " substitute " a " .

Shri Naziruddin Ahmad : My amendment No. 410 comes in by way of priority according to the subject because this amendment is the real clause. My amendment seeks to delete ' Aliasantana law ' .

Mr. Deputy Speaker: The Hon. Member may move it.

Shri Naziruddin Ahmad: I beg to move: In the amendment proposed by Dr. Ambedkar, in part (ii), omit the proposed part (i) of clause 3.

Before that I have certain verbal and formal amendments which I think, need not be pressed before the House, that is in the amendment proposed by the Hon. Minister of Law in item (ii) there is the renumbering amendment that runs all through the amendments. If we take up the renumberings at this stage it will create confusion, and we do not know where we would be. They should be done by the Secretary or the Draftsman and therefore I suggest that for the time being we should eliminate these renumbering amendments. I have a lot of amendments to cure these verbal irregularities, but I do not wish to move them because I want to leave them entirely to the Secretary.

Coming to my amendments, they are for the deletion of the definition of Aliyasanatana law and I have other amendments to delete the definitions of Marumakkattayam and Nambudri law. The reason for moving this amendment is this ; that this is as well as other amendments relate to these special laws, which I want to delete because this is the policy of the Bill, namely to make no reservation, no exceptions in any case. In the case of Sikhs we have decided to make no exception. In the case of others we have

made no provision to exclude them from the operation of the Code. That being the accepted principle...

Mr. Deputy Speaker : I understand the Hon. Minister to say that he now proposes to extend all the provisions of this Act to both these classes also.

Shri Naziruddin Ahmad : That means the marriage and divorce law laid down in the Bill will also apply to those Hindus who are now governed by Aliyasantana, Marumakkattayam and Nambudri law separately.

Mr. Deputy Speaker: Therefore, the objection is over.

Shri Naziruddin Ahmad: The objection is that if general provisions are to apply to all Hindus so far as marriage and divorce is concerned, the definition is absolutely unnecessary! It is rather misleading.

Mr. Deputy Speaker: We have accepted this. We had included others as in the case of Sikhs. There is no need for separate definition. The Bill includes it and therefore it is not necessary. Exception is made for Aliyasantana and Marumakkattayam law. They are excluded from the operation of marriage and divorce laws as envisaged in the Bill.

Shri Naziruddin Ahmad : I do not think they should be excluded at all.

Mr. Deputy Speaker : That is exactly what the Hon. Law Minister is trying to do.

Dr. Ambedkar: That is what I am trying to do.

Shri Naziruddin. Ahmad : By the inclusion of this definition ? If that is the specific purpose, then, my amendment is needless.

Mr. Deputy Speaker: Originally, those who were governed by the Aliyasantana Act and Marumakkattayam law were excluded and they were allowed to be regulated by those two laws. The Hon. Law Minister now feels that they must also be brought into the frame work of the Act so as to bring about uniformity. That is why he is adding this.

Shri Nariruddin Ahmad : My perplexity arises from the fact that even apart from this definition, they will ordinarily be included.

Mr. Deputy Speaker: The Bill specifically excludes them.

Shri Naziruddin Ahmad : That portion should be deleted. There is repetition.

Mr. Deputy Speaker : The hon. Member began under the wrong impression that originally they were included and the Law Minister wants to exclude them.

Shri Naziruddin Ahmad : The exclusion should be by amending the general clause; not in the definition.

Mr. Deputy Speaker: That is another matter. As a matter of substance, hon. Member's amendment has absolutely no force.

Shri Naziruddin Ahmad: I quite agree.

Mr. Deputy Speaker : Then, why should he look at formal affairs and verbal amendments. If it is necessary, let us have this definition for the purpose of clarification instead of relegating it to some General Clauses Act.

Shri Naziruddin Ahmad: Not the General Clauses Act, but the general definition of Hindus under this Act. It should apply to all Hindus. This Aliyasantana law governs the Hindus. This is special mention and then inclusion. The inclusion is already there.

Mr. Deputy Speaker : The backbone of his objection is broken. The hon. Member is trying to get at some formal affair. Is it necessary ?

The Minister of Home Affairs (Shri Rajagopalachari) : I think the hon. Member has not realised the actual position. There are two ways of excluding certain classes or groups ; one by actually ignoring them in the whole Code and another by referring to them and providing for them as exception. If the Hon. Law Minister has chosen now to provide for them by making exceptions in the body of the Code, it is necessary to deadline them.

Mr. Deputy Speaker : It is the other way about. He has already made exceptions in favour of these and he has provided for exclusion from the Bill.

Shri Rajagopalachari: That is what I have said.

Mr. Deputy Speaker : What he wants to do is to include them.

Shri Rajagopalchari : I think the hon. Member who has moved the amendment is thinking that we have applied the whole Code bodily to these people and therefore, since you have defined the Hindus, why should you define these people. The answer is, we do not propose to apply the provisions in the Code bodily to them but to provide exceptions and therefore it is necessary to define who they are.

Shri Naziruddin Ahmad: I fail to appreciate all this fineness. If the Code is to apply, it should straight forward be applied to them, instead of leaving any exceptions.

Shri Rajagopalachari : Suppose we applied it to them; " they " should be defined here. That is what is being done.

Shri Naziruddin Ahmad : It should apply to all ; they are already included in the definition of Hindus.

Shri Rajagopalachari : There are exceptional provisions for these people.

Mr. Deputy Speaker : Let me understand first ; without understanding, I cannot put it to the House. As the Bill stands at present, clause 51 says:

"(1) Nothing contained in this Part shall be deemed to affect any right conferred by the Madras Marumakkattayam Act, 1932 to obtain the dissolution of a sacramental marriage, whether solemnised before or after the commencement of this Code. " Therefore, under the Bill as it has emerged from the Select Committee, Marumakkattayam Law is allowed to apply so far as those persons who are governed by this law are concerned. What the Hon. Law Minister wants to do is not to create exceptions in favour of any particular class, but to bring them all under this Act.

Dr. Ambedkar: Yes.

Mr. Deputy Speaker : That is what Mr. Naziruddin Ahmad wants. Originally he was under the impression that an exception is sought to be made. He was

under the impression that originally those governed by the Marumakkattayam law and Aliyasantana law were governed by this Code and the Hon. Law Minister wanted to make exceptions and that is what he objects to. Now that he knows that the original Act made an exception and they are being brought under it, he withdraws his objection, but he clutches,—let me withdraw that word— he wants to raise a formal thing, regarding the definition of Marumakkattayam and Aliyasantana. The substance has gone. Why should he worry himself over these formal things ?

Shri Naziruddin Ahmad: Clause 51 should be deleted. That would be enough.

Mr. Deputy Speaker: That is a matter of procedure.

Dr. Ambedkar: We will come to that later on.

Mr. Deputy Speaker: We will come to that later on.

Shri Naziruddin Ahmad : There are special provisions in this Bill for all these people. That should be dropped. The definition should also be dropped.

Mr. Deputy Speaker: There is no harm in making it clear.

Shri Naziruddin Ahmad: It would only be showing one's nose in a round about way.

Mr. Deputy Speaker : Aliyasantana law is not a general law going into the customs and other things. This is a Code.

The Minister of State for Transport and Railways (Shri Santhanam) : After we have finished the whole thing, if any substantial provision of Aliyasantana Act does not come in, then we can revert to this, if it is superfluous. It is better to start with a definition because some provisions as they stand has reference to it.

Mr. Deputy Speaker : I suppose the hon. Member Mr. Naziruddin does not see any necessity for this. As a matter of fact, his point has been put forward in the Hon. Law Minister's amendment. Therefore, all the amendments standing in the name of Mr. Naziruddin Ahmad are not moved.

Shri Naziruddin Ahmad : No, no.

Deputy Speaker: Amendment No. 372 is a formal one, I shall take the responsibility for re-numbering.

Shri Naziruddin Ahmad: Amendment 410 is not pressed.

Mr. Deputy Speaker : Then, there are amendments 374 and 375.

Shri Naziruddin Ahmad : I press amendment No. 374. But, my amendment No. 377 comes earlier.

Mr. Deputy Speaker : The hon. Member may move it. So far as formal amendments are concerned with regard to brackets, etc., I shall instruct the office about them.

Shri Naziruddin Ahmad : I shall not move then any more at all. That is quite enough. I Move Amendment No. 377.

Pandit Thakur Das Bhargava (Punjab): Am I to take it that you have exhausted sub-clause (i) ? I have got an amendment.

Mr. Deputy Speaker: Let me first finish the first clause.

Pandit Thakur Das Bhargava: I have no objection if Mr. Naziruddin Ahmad claims to move all his amendments first.

Shri Naziruddin Ahmad: It is not a claim; it would be more convenient.

Mr. Deputy Speaker: Let me first dispose of sub-clause (i) of clause 3.

Pandit Thakur Das Bhargava: I beg to move; In part (i) of clause 3, for the words "among Hindus " substitute the words " among persons to whom this Code applies. " I do not want to make any speech as the thing is very apparent.

Mr. Deputy Speaker : Amendment moved : In part (i) of clause 3, for the words " among Hindus " substitute the words " among persons to whom this Code applies. "

Shri Santhanam : Clause 2, sub-clause (3) covers this point fully. 'Hindus ' means all people to whom this Code applies.

Mr. Deputy Speaker: This House has already adopted the definition.

Pandit Thakur Das Bhargava: I know that. But, nothing is lost if we use these words which are very expressive. Suppose a person reads any other section ; then, he has to know what the definition is. Unless he keeps the definition in mind, he would not be able to know to whom this Code applies. These words express the meaning fully.

Mr. Deputy Speaker: Even then, he has to revert back to the meaning of persons to whom this Code applies. We are only using an expanded definition.

Pandit Thakur Das Bhargava: ' Persons to whom this Code applies ': he has to take this definition everywhere. This is more particular. I leave it to the House.

Mr. Deputy Speaker: I am only trying to know whether it is a matter of substance on which greater emphasis should be laid or a formal thing. Anyhow, I take it as moved.

Pandit Thakur Das Bhargava: I beg to move: In part (i) omit the words " and uniformity ".

Shri Santhanam: I want to get one point clear. Does the hon. Member suggest that if there was a custom one thousand years ago in a particular

Pandit Thakur Das Bhargava: I have not yet spoken on my amendment, and my hon. Friend there is already opposing it.

Mr. Deputy Speaker : No, the mover only means that uniformity is a difficult matter for the whole of India. Amendment moved: In part (i) omit the words " and uniformity ".

Pandit Thakur Das Bhargava : With your permission I shall move my other amendment also: In part (i) of clause 3,—

(a) after the words " group or family " occurring in line 4, add the following:

" or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or

family "; and

(b) Omit the first proviso.

If you will allow me, I shall argue out my point in moving these amendments.

Mr. Deputy Speaker: Not now, I shall come back to the hon. Member.
Amendment moved: In part (i) of clause 3,—

(a) after the words " group or family " occurring in line 4, add the following:

" or any rule, which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family "; and

(b) Omit the first proviso.

Shri Jhunjunwala (Bihar) : I want to move my amendment No. 413 in a slightly modified form, using the word " *varna* " for the word " caste " occurring there.

Dr. Ambedkar : It rather confuses me if the word " sub-clause " is used when referring to these parts or items of the clauses. In matters of this sort, we speak of items. They are referred to as item 1 and item 2 and so on. There are no sub-clause to these clauses. They may please be referred to as entries or items.

Mr. Deputy Speaker ; There are these clauses and then these sub-clauses and sol.....

Shri Santhanam: No, Sir, Sub-clauses are numbered as usual.

Dr. Ambedkar: Whatever word may be adopted, it is better to avoid the word " sub-clause ".

Mr. Deputy Speaker: All right. I shall use the word " entry " or " part ". Here Mr. Jhunjunwala wants to modify his amendment by changing the word " caste " into " *varna* "—as was suggested by the Law Minister yesterday.

Shri Jhunjunwala: I beg to move: In part (i) after the word " tribe " insert the word " *varna* ". I would, also like to move my amendment No. 414 with a slight modification, omitting the words coming after the words " principle castes ", I beg to move: After part (i) insert the following new part:

" (ia) the word "*varna*" means according to the context in each case four principle "*varnas*". "

Mr. Deputy Speaker : Amendment moved : After part (i) insert the following new part:

" (ia) the word "" *Varna* " means according to the context in each case four principle "*varnas*". "

Shri R. K. Chaudhari (Assam): I beg to move: Omit the Provisions to part (i) of clause 3. **Mr. Deputy Speaker :** Amendment moved : Omit the provisions to part (i) of clause 3.

Shri Syamnandan Sahaya (Bihar): I also want to move the amendment. We both of us have given notice of the amendment jointly.

Mr. Deputy Speaker: I do not attach much importance to the moving of the amendment by all the Members. But if the hon. Member wants to withdraw

any amendment, then I will see that the other hon. Member has his say or if the hon. Member is absent, then the other hon. Member will be able to withdraw it.

Captain A. P. Singh (Vindhya Pradesh): I want to move my amendment No. 378, dealing with part (viii).

Mr. Deputy Speaker: We have not come up to that part.

Shri Syamnandan Sahaya: You were pleased to say that you would first deal with all amendments belonging to one category or group. I suggest that only the amendments dealing with the definition of one thing be taken up now, discussed and disposed of and then we go to another set of amendments dealing with another point. Otherwise it will lead to difficulties.

Mr. Deputy Speaker: That is exactly what I am doing. We are now dealing with amendments to only part (i)—"Custom" and "usage."

Shri Bhatt (Bombay) : I have tabled an amendment which must have reached you. It is about custom and usage.

Mr. Deputy Speaker: Well, what is it ?

Shri Bhatt: It is about part (i).

Mr. Deputy Speaker: But I have not got a copy. I would not like the House to be taken by surprise. At least the mover of the Bill should be given a copy of the amendment sufficiently in advance and also a copy sent to me. That is the minimum I expect. We should not be taken by surprise.

Shri Bhatt: I thought you would probably have got a copy of it from the office as I got one just half an hour ago.

Mr. Deputy Speaker: When was it delivered ?

Shri Bhatt: This morning.

10 A.M.

Mr. Deputy Speaker: I do realise that some amendments may have to be allowed either from the Government side or the other side at the last moment. But I would suggest to hon. Members that at least the Law Minister must be given previous intimation of such amendments and a copy also sent to me. I will rigorously adopt this rule so far as new amendments are concerned. They should be agreed to by all sections of the House.

Shri Bhatt: For part (i) of it I have proposed I beg to move: For part (i) of Clause 3, substitute the following:

" (i) the expressions ' custom ' and ' usage ' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family:

Provided that the rule is certain and not unreasonable; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family, "

Mr. Deputy Speaker: What is the 'difference between this and that?

Shri Bhatt : That I have taken out of it. A portion of it has been retained.

That is why I have drafted this amendment in this way.

Mr. Deputy Speaker : Amendment moved : For part (i) of Clause 3, substitute the following: " (i) the expressions " custom ' and ' usage ' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family:

Provided that the rule is certain and not unreasonable; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family. "

Shri Syamnandan Sahaya: The amendment moved by Shri R. K. Chaudhari relates to part 2 and not one.

Dr. Ambedkar: It refers to the clause as it stand now.

Pandit Thakur Das Bhargava : In connection with my amendment Nos. 444 and 446. I would like to make some general observations regarding custom. The sole basis for the present Code is that such customs and laws as are opposed to the principle to be enacted in the Code will be abrogated for all time. I take it that the central principle of this codification is that all various customs in all parts of the country will, as a matter of fact, be so unified by the provisions of the Act that one law shall be applicable to the whole of India for the communities concerned. I have accepted that basis as good and I am in favour of the codification, because our laws will then become certain and they will become applicable to all Hindus all over India.

Apart from the unification of the customs sought to be done by the Code, there are many customs and laws, which we want to see, changed. It is not only an attempt at codification. It is certainly a code in which we want all our bad customs and laws to be modified and hence in that respect it is a reform Bill also. I am in favour of the provisions of the Bill because I think they are a great advance upon the present practices and they imply reforms of a very great degree among the laws and customs now obtaining among the Hindus.

But when I find Dr. Ambedkar agreeing to this or that custom coming into the Bill I feel that the essential principle on which the Code is based is being sacrificed to opportunism. I know that he is in a great fix and I have nothing but sympathy for him. Left to himself I am sure he will not accept these customs. Left to myself I would behave in the same way and there is no difference so far as this attitude is concerned between him and myself

Mr. Deputy Speaker : We are now on the definitions only. Such matters as *sapinda*, *sagotra* or degrees, in regard to which whether custom ought to be allowed to prevail, we will deal with them, we come to individual cases. Is it the hon. Member's intention that the definition of Customs should go ?

Pandit Thakur Das Bhargava: The definition of the word " custom " will govern the word wherever it appears in the subsequent clauses. That word will have the meaning which we assign here.

Therefore it is very necessary to understand the significance of the word "

custom " and see how it affects our principles. For us to know the full meaning of the word it is necessary that we realise how we are altering the entire provisions of the Code, when we define " customs " in the manner proposed.

Mr. Deputy Speaker: The hon. Member is sufficiently an elderly Parliamentarian to know things but I want to understand things for myself. When individual items such as marriage or divorce come up we shall see what further changes have to be made in respect of that particular portion. We might say " Notwithstanding this, this shall not be allowed, etc." We are now on the definition and let us not enlarge the scope and discuss every one of the entries and see how such and such custom will work hardship. That would mean another general discussion.

Pandit Thakur Das Bhargava: I understood you Sir, even without the exposition which you have been kind enough to make. I quite see the force of the point you have made. You are here only defining customs but whatever definition is given here will apply to all those customs, which are allowed in respect to certain matters.

Mr. Deputy Speaker: Not necessarily. With regard to the Sikhs or some others we might say " Notwithstanding, this custom shall not prevail ".

Pandit Thakur Das Bhargava: What is the meaning of our saying that customs in regard to the incidents of marriage will prevail ? It means that a certain kind of rule shall prevail and that rule or principle we are defining here, whether it should be such as is opposed to public policy but all the same one which has got the force of law.

Mr. Deputy Speaker: As to how custom ought to be recognised, if hon. Members want to impose restrictions it is certainly within the scope without going' into the details of the various customs prevailing.

Pandit Thakur Das Bhargava : I am not on details at the moment. When the occasion arises we shall see whether the custom should be allowed to prevail in respect to those matters. Here I am making only general observations and submitting to Dr. Ambedkar

Mr. Deputy Speaker: The general observation that there shall be no customs and so forth could come at the first and second stage.

Pandit Thakur Das Bhargava: I am not saying that no custom should be allowed. I am only saying that he should not be very liberal and allow many kinds of customs, which will take away from the effect of the Bill. Then it would mean that there would be no use having this Code if in respect of every matter you allow a custom to prevail.

Mr. Deputy Speaker: We are once again going into the details. It is one thing to say that hereafter no custom at all will prevail, only the law will prevail. But it is another thing to say that we have to allow certain customs. In that case when we go into the details we will find out what ought to be allowed and what customs ought not to be allowed.

Pandit Thakur Das Bhargava: I am restricting the scope of customs by this

definition. Supposing only those customs as have been judicially recognised are to be allowed, that would certainly restrict the scope of custom. Otherwise if we leave custom undefined when a man is faced with difficulty and produce any amount of evidence ; custom can be proved not only by instances but by opinions, by reference to texts. Therefore, I want that so far as custom is concerned its scope may be restricted. It is not that I have only taken one case and put it for the consideration of Dr. Ambedkar. I have gone further and just to show the absurdity of how he is allowing so much liberalisation of customs, I have given certain amendments to show to him and to impress upon him that he should proceed cautiously. Therefore, my amendment No. 446 says:

" or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family ".

I can understand that there are some customs, which are growing, some which have been crystallised. As regards those, which are growing, we want that they may not grow because that is the only way of having a statutory rule effective. In regard to customs, which have not been judicially recognised, my own view is that we should not bring them within the scope. Either we accept that the society should accept custom as the sole rule of conduct and there should be no other rule among the Hindu community as was the case before—in that case also we will reach a stage when custom will become so stereotyped that we will attain what we want to—or, in the other case when we want to impose the rule of thumb, when we want to lay down by statute that such-and-such shall be the rule. Anyhow we will be well advised if we recognise customs which have been judicially recognised. In the definition given, it would appear there is no mention of any judicial recognition of any customs. On the contrary, the words in the first proviso are:

" that the rule is certain and not unreasonable or opposed to public policy ".

I am opposed to the wording, " opposed to public policy ". I do not know what the " public policy " is. So far as monogamy is concerned, I understand the public policy to be that the Government seems to be of the view the monogamy is a good thing for Hindus but then for rest of the community it does not apply ; as regards my Mussalman friends, many of whom I know do not like polygamy still the government is undecided and has taken shelter under the specious plea that they have not been consulted. If a thing is opposed to public policy, it is so for all. I know of a custom in the Punjab where *kharva* marriages are allowed. They cannot be called absolutely bigamous, but at the same time they are a different edition of bigamy because after the man dies the *devar* of the woman, that is the younger brother of the deceased husband, though his spouse may be living, is allowed to marry that widow; the property remains with the family, and the lady also remains with the family. So, opposed to public policy might mean anything. It is so flexible

a term that it shall vary with the length of the foot of the Law Minister, I am therefore opposed to these words. I would rather like that any custom which has been judicially recognised, which has stood the test of time should be recognised.

Mr. Deputy Speaker: Hereafter there will not be any custom.

Pandit Thakur Das Bhargava : My submission is that in regard to this matter in which the Hindu Code seeks to provide, there should be no custom ; otherwise the whole purpose of the Code will disappear. You are perfectly right. Sir, when you say that in future there will be no custom on matters on which the Hindu Code provides, but in regard to other matters, so far as the Hindu Code does not relate to those matters at all.....

Mr. Deputy Speaker: What will happen if there is a particular custom which is undisputed ? It need not come to court. Only a disputed custom comes to court and is recognised or not. Any custom which is not obnoxious to public policy is recognised by the community. Merely on account of not having been recognised by a court does it lose its stand ?

Pandit Thakur Das Bhargava: My submission is that if there is provision for it in the Code then it does not grow. If there is no provision then it will remain and grow, and even if you took away these words " opposed to public policy " still it will remain because it is a rule of law. If you put the words " opposed to public policy " then, in spite of the fact that a custom is a good one and observed by great numbers in the community, it will not grow if somebody is able to say that it is opposed to public policy.

Mr. Deputy Speaker: The Hon. Member is a good lawyer. My own interpretation is different. Wherever this Code specifically provides for a particular thing, unless an exception is made, to that extent a custom is abrogated whether it be opposed to public policy or not. What is the difficulty under which the hon. Member is labouring ? There are certain customs, which have to be recognised, certain customs which are obnoxious and so opposed to public policy. Public policy is only a matter which can be judged by the foot of the judge. In regard to those matters we can say, why leave them to the court to decide; those customs are absolutely obnoxious. But with regard to other customs why say that they ought to be recognised by a court ? I think it is impossible to legislate for all the things.

Dr. Ambedkar: Perhaps you will allow me to intervene for a minute or two to clarify the point.

Pandit Thakur Das Bhargava: I am. Sir, of the same view as was expressed by you, but I am expressing it in a different way. I do not want to tamper with the customs which are growing which are good customs, but my fear is that any court may take upon itself to say that it is opposed to public policy. All the customs are not treated here because we have not the time and energy to go into all the customs throughout the country. Because we cannot say what customs will be saved, we should say that a custom to be

recognised shall have to be judicially recognised as not opposed to public policy.

Dr. Ambedkar : The question which has been raised by my friend Pandit Bhargava is no doubt very important and so far as I know there is not the slightest difference between the view that I take and the view that he takes. The only thing is that he has applied his mind, if I may say so, to a wrong clause and that is why he has been rather confused as to what exactly is the position. Those Members of the House who are interested in the subject of custom *versus* the Code had better begin to apply their mind not to clause 3 but to clause 4 which is the main clause which deals with this matter of authority of custom as against the authority of the code and the law. And you will find, Sir, a very clear statement therein that unless a custom has been expressly saved that custom will not have any operation as against this law. Therefore, the question whether any particular custom has been expressly saved or not has to be gone into when we come to discuss each of the clauses of this particular Bill whereon Members may raise the question whether the particular clause should stand in the absolute way in which it has been drafted or whether it should be made subject to any particular custom. If any particular clause in this Bill does not say " Save as otherwise provided by custom " or " unless there is a custom to the contrary " there is no custom which this Bill proposes to recognise. Therefore, on that point there ought to be no doubt. There is not the slightest intention to allow custom to override in a general way the provisions of this Code.

My. hon. Friend has, I know, a particular question or an occasion in mind when he feels that I have been going rather soft on this particular subject, but I can tell him that it is only in very very rare cases that I propose to yield on this subject, subject to the fact that anyone who presses upon me that the custom should override this particular Code in any particular way will carry upon him the burden of showing that that custom is more progressive than the provisions of this particular Bill.

Now, supposing that we do introduce a qualifying statement when we come to deal with different subjects, i.e. we say that that clause shall be subject to any existing custom or something like that, even then the question remains : What is the standard to which that particular custom must conform before it can have that over-riding effect ? It is that question which is dealt with in the definition clause, so that whenever any custom is saved it will nonetheless be open to find out whether the custom which is allowed by the particular clause to prevail upon a provision of this Bill conforms to the definition which is really a definition laying down the standard to which a custom must reach before it can be accepted by the court. That is the position.

So far as (ii) of clause 3 is concerned, there is nothing in this clause which is not bodily taken from the judicial pronouncements of the different High Courts in our country which have had to consider what is the custom to which they

will give their sanction, and I think the ingredients of custom which the courts have laid down have been bodily and literally embodied in (ii) of clause 3. So, I do not think there is any ground for quarrelling with the definition, because the definition is necessary. Even where we allow custom to prevail, we do not allow any kind of custom to prevail but only custom which conforms to the standards which have been laid down by the High Courts and hon. Members will see that the standards laid down in (ii) are the standards which have been sanctified and laid down by the various courts in our country.

Shri Naziruddin Ahmad: Even in foreign courts this is so.

Dr. Ambedkar: Everywhere this is the same. I have looked up even Stephen's Digest of English law and I find that the wording is almost the same as we have got here.

Pandit Thakur Das Bhargava : I am very much obliged to my Hon. Friend the Law Minister for his having kindly explained.

Shri J. R. Kapoor: (Uttar Pradesh) : Has the hon. Member not finished ?

Mr. Deputy Speaker: No. He will continue. He is on his legs. Incidentally not only Members of Parliament but also outsiders are watching the progress of this Bill and there is some misunderstanding about my position. Once I sit here I have absolutely no colour, no caste, no creed. That is my honest position. To the best of my conscience I have tried to discharge my duties impartially. If any hon. Member feels rightly or wrongly that I am not doing it properly, I always welcome his coming and telling me privately that I must do this and that.

I find that even hon. Members of this House are under the impression that when an hon. Member is on his legs I can ask him to sit down. I have been appealing to hon. Members that with respect to important matters, certainly sufficient latitude and time is necessary and must be allowed but if they repeat matters which have been discussed at various stages that is not right. Barring that, I am not in a position to impose any time restriction. If the Hon. Minister of Law can tell me that I can impose any time restriction on speeches under the law, it will be only too glad to avail of it.

Dr. Ambedkar : It cannot be done. But we have agreed amongst ourselves to impose a self-abnegation ordinance.

Mr. Deputy Speaker : I am very glad of that, but the burden should not be cast on the Chair. In a Finance Bill, I can apply the guillotine. This has been newly introduced. Hitherto the guillotine was applied to only Budget Grants, but recently it has been introduced so far as Finance Bills are concerned. I can fix a time limit and all amendments will be lost unless they are moved and accepted or rejected before that time limit. But with respect to other Bills, I have no right to fix a time limit even with respect to the Bill as a whole. With this restriction, I feel very much embarrassed if any hon. Member thinks that I am allowing too much time. That is my position and the position of anybody who may be in the Chair.

Lastly, if any hon. Member feels that there has been sufficient discussion on a particular clause, he can kindly tell me. There of course, I have my discretion. If I too feel that the matter has been elaborately discussed or at any rate sufficiently discussed, I will agree to the closure motion. To that extent, there is discretion in me. Hon. Members who make suggestions will kindly bear all these things in mind. I am making this statement because an impression is created out-side that notwithstanding the suggestions of hon. Members I am standing in the way and holding the pendulum back.

In this connection, may I also inform the House that I have received a letter from the Managing Editor of the *Indian News Chronicle* ? Yesterday, as the House will recall Shri Amolak Chand drew my attention to a cartoon appearing in this paper which described some Members as holding the minute hand and hour hand and withholding the progress of the clock, and the Deputy Speaker as catching hold of the pendulum firmly so that the clock cannot move this side or that side. The hon. Members are shown as looking up and not looking down and seeing as to who is the man that is really holding the clock back. That is the impression that was created by that cartoon. Since I made reference to this matter yesterday and it is practically a privilege of the House and I am only its spokesman, I would like to read this letter. It is written by Shri Deshbandhu Gupta, Managing Editor and runs thus:

" My dear Shri Ananthasayanam Ayyangar. I am informed that you took exception to the cartoon which appeared in the Indian News Chronicle yesterday morning under the caption " putting the Clock Back ". You are reported to have expressed the view that the cartoon was calculated to cast aspersions on the Chair. I am very sorry that the cartoon has given cause for offence to you personally or in the capacity of the Deputy Speaker. The cartoonist assures me that it was remotest from his intention to show any disrespect to the Chair or to the House and joins me in assuring you of the desire of the Indian News Chronicle to uphold the dignity of both.

The theme of the cartoon as you will kindly see is to illustrate the current situation in Parliament in which in spite of the Chairman's desire to regulate the debate so as to conform as nearly as possible to time schedule, some members participating in the debates have endeavoured to prolong the debate and thereby hold the progress of the Bill. I am assured by the cartoonist that in introducing the Deputy Speaker in the cartoon in this role he had no other intention. While regretting that anything in the cartoon should have given cause to you for offence. I hope you will be good enough to accept this explanation and our sincere assurance that there was no intention whatsoever of showing disrespect to the Chair and the House. "

I think this is sufficient.

Dr. Deshmukh : From the Chair, he has shifted to Members. He is accusing Members now. It is worse.

Shri Radhelal Vyas : (Madhya Bharat) : I think the matter should be

referred to a Committee of Privileges.

Shri Bhatt: It should be made clear that it was not intended to cast aspersion on any Member either.

Dr. Deshmukh: Shri Deshbandhu Gupta should be made to apologise to the House.

Mr. Deputy Speaker: Evidently he feels that the speed which he expects of the progress of the Bill has not been made in this case. I shall later look into the matter as to whether any aspersion or insinuation has been cast on any hon. Members of this House.

Pandit Thakur Das Bhargava: So far as your observations are concerned, with your permission I would like to say a word. The Members of this House realise that the Chair is sacred. Here sat Vithalbhai Patel—whose portrait we see before us—who sanctified the Chair. After him was it adorned by men of great eminence and prominence. We all know that the Chair has been holding the scales even. It is idle for the outside world or any members here to think or feel that the Chair is not impartial or dealing fairly with any question.

But at the same time when passions are frayed, when persons take sides, they are apt to see from an unbalanced standpoint the conduct of the Chair or of the Members of this House. Now great exception was taken by some Members, and they even asked you to stop a Member during the course of his speech. I can fully understand the view-point of every Member who wants to make a long speech. Even Dr. Ambedkar made certain statements to which certain Members took exception, though I was not one of them. Every Member has a right to criticise. So far as we are concerned our skins are too thick now to get offended by such criticism. So far as the conduct of the Chair in this House is concerned, no member has for a moment even thought that it is conducting the business in a partial manner.

The newspapers have a right to criticise anybody and everybody. I personally would not mind if any pressman criticises me. Let them criticise—they have their own point of view. Let us not be so thin-skinned,

So far as aspersions on the Chair are concerned, by any person either inside or outside the House, I would take strong exception and if you feel that the apology offered is not satisfactory, you should take action against the person concerned.

Mr. Deputy Speaker: So far as I am concerned, I am satisfied with what he has written. It is, therefore, unnecessary to pursue the matter. If, however, any hon. Member feels that this letter casts any aspersion on him, we shall look into it. At present I do not think any aspersion is cast on any hon. Member or on the House.

Shri Santhanam : Is it suggested that only Government is liable to criticism and not the Members ?

Dr. Deshmukh : While Mr. Gupta wrote the letter with the intention of clarifying his position so far as the cartoon was concerned, he has

unnecessarily gone out of his way to criticise a section of the Members by alleging that they were obstructing this measure.

Mr. Deputy Speaker: This letter consists of two parts. So far as the Chair is concerned and the privilege of the House is concerned, the matter may be left to me. I am satisfied with what he has written. If, however, any hon. Member feels that it casts any aspersion on him, he may meet me in my chamber and we shall discuss the matter.

Pandit Thakur Das Bhargava: What objection could be taken to that ? Mr. Deshbandhu himself took four hours on the Press Bill ; our friend Mr. Naziruddin Ahmad took seven hours on this Bill.

Dr. Deshmukh: It is a case of the pot calling the kettle black. In regard to what you said about yourself and the conduct of business in the House. I want to say a word with your permission and that is this. Whereas I sincerely welcome all your interruptions and the help you give for the conduct of the business of the House, I would like to point out with all due respect, that if the debate is allowed to go on, probably we might spend lesser time. I have the utmost respect for the Chair and it intervenes only with the idea of helping the proceedings. But if it could be minimised and help given only when it is necessary, we will probably be able to advance better.

Shri Bharati (Madras): It is a direction to the Chair which is uncalled for.

Dr. Deshmukh: The Chair has invited our opinion.

Shri Bharati: Not for giving directions to the Chair.

Pandit Thakur Das Bhargava: As a Member of this House I wish that this rule of free speech is stuck to. I do not want to put any obstacles in the progress of this Bill. All the same I feel very much offended if I feel an inner urge to speak more and more and yet the Chair pulls me up and does not allow me to speak fully. All Members are expected to put a self-restraint on themselves. Now, I come to the subject.

I am very much indebted to Dr. Ambedkar for having very kindly explained this point of law. I quite see that custom has been defined in many judicial pronouncements. But that was not my point. I wanted to suggest that one of the accepted canons for the validity of custom should be that it should be judicially recognised. I suggest this fact that customs have been judicially recognised may not be given a go-by when custom is opposed to public policy. If a custom has been judicially recognised, it means that it has passed through the seam of courts and has received recognition at the hands of the judiciary.

Dr. Ambedkar: If I may intervene for a moment, that question will again arise, or may arise, or may be raised, when we are dealing with each particular clause. My hon. Friend suggested " any custom which is judicially recognised " ! It is perfectly open to him to say so. But as you very rightly observed, if we are to confine our recognition to a judicially recognised custom, it will create many difficulties, because there are good customs which

satisfy all the ingredients of the definition, yet have not come to the court for judicial recognition. I am only anticipating the difficulties.

Shri Santhanam: The word 'judicially recognised' may mean, recognition by a district court, or a High Court. We cannot say judicially recognised means recognised by the Supreme Court.

Pandit Thakur Das Bhargava : It must be judicially recognised and further it must be certain. It must be not unreasonable, it must be continuous and it must have the force of law. I only want custom which has been judicially recognised should not be given a go-by in the name of public policy. Therefore all these ingredients of a valid custom which are defined by the judicial courts may be accepted.

Mr. Deputy Speaker: The proviso requires that "the rule is certain".

Pandit Thakur Das Bhargava : It must be certain, not unreasonable and have the force of law. But the words "and uniformity" and "or opposed to public policy" may not be there. This is the difference I want to see carried out.

Mr. Deputy Speaker : Where a single custom applies to all classes of human beings, then it is only by nature

Pandit Thakur Das Bhargava : I beg to be excused. When it is said that a custom should apply to all human beings it must be almost a universal rule or law. It applies to a tribe, community, group or family, as has been defined here. If you say "uniformity" this would mean that the custom that applies to any family or caste or community or tribe will all go away. When the word "continuously" is there and when the word "law" is there I do not understand the necessity for the word "uniformity".

Mr. Deputy Speaker : I understand "uniformity" to mean without variation.

Dr. Ambedkar : That is the point. I was almost going to say that.

Pandit Thakur Das Bhargava: There are different customs between different families. How can they be uniform ?

Mr. Deputy Speaker : The hon. Member has not appreciated the point. We shall assume that there is a custom and it has been continuous, but it has been followed with variations. Suppose somebody is collecting Rs. 10 in a certain period and it was Rs. 15 in the next period and Rs. 20 in a third period, is it suggested that the application should be not only with respect to custom but to laws and grants also ? Suppose it is held by judicial decisions that this was not uniform. Therefore, you cannot presume. Similarly, uniformity means not uniformity with respect to the caste or family etc. but in the family itself it must have been not only continuous but uniform also, that is without variation.

Dr. Ambedkar: That is what it means—without variation.

Pandit Thakur Das Bhargava: As if the changed custom will not be recognized by law. If there is a custom which has gone out of use

Mr. Deputy Speaker: Wherever there is a change, that change must have

been so continuous, so long and so certain ...

Pandit Thakur Das Bhargava : The word " continuous " is there and I do not object to it. I object to the word " uniformity " .

Mr. Deputy Speaker: Has Mr. Naziruddin Ahmad got any substantial amendment ? I do not think so.

Shri Naziruddin Ahmad: I want to speak on ' custom ' .

Mr. Deputy Speaker; First I will deal with those who have got amendments. Does Mr. Jhunhunwala want to speak on his amendment ' ? I am not inviting him to do so!

Shri Jhunhunwala: Yes, Sir, I want to speak on it. In my amendment I want to add the word " *varna* " after " tribe " .

Mr. Deputy Speaker : He wants caste custom also to be recognised there. He wants to introduce among the various categories " caste " also, after the word " tribe " . He has already tabled an amendment to that effect. Now he wants to change the nomenclature of the word from " caste " to " *varna* " .

Shri Jhunhunwala : I want that the word " *varna* " should occur after the word " tribe " in clause 3(i). The object of my putting in this amendment is that while customs and usages will be recognised according to the area, tribe, community, group or family, the reasons for recognising such usages and customs have not been explained by the Honourable Doctor. But if the principle is accepted that certain customs and usages will be recognised, if as he has said these are proved to be progressive, in that case the customs which are prevalent in different *varnas* according to *Varnashrama Dharma* should be recognised if the conditions laid down by the Hon. Doctor are satisfied.

This *Varnashrama Dharma* is of no recent origin. People say that it is only in the puranic time that these *varnas*, castes and all these things have come into existence. But that is not a fact. These things were in existence long before, say 3,000 years back. They have got a great deal to do with our life and social structure as well as our economic structure. All the four *varnas* have got different usages and different customs, and they have meaning behind them. Every usage and custom has got meaning behind it, and duties are allotted to different *varnas* according to their ability. The other day when a question was put to him whether he has got the sacred thread, the Hon. Mr. Gadgil said, " Yes, I had a sacred thread " , then he took off his coat and said, " See, I have taken it away " . Mr. Deputy Speaker: He did not take off his coat. Shri Jhunhunwala: I stand corrected. He did not take off his whole coat and the reason which he gave, to which I attach importance, was that he is not capable of following the *Dharma* of a Brahmin for which the sacred thread is worn, and he said, " Therefore, as an honest man I thought it my duty to throw it away " . Sir, this shows that even the hon. Mr. Gadgil recognizes that there is something very great and sanctifying in the usage and of putting on the sacred thread before a Brahmin is married. In the same way there are

similar customs in other *varnas* also. Therefore, it is very necessary that all the customs which are prevalent in different *vamas* should be recognised if they satisfy the conditions laid down by the Hon. the Law Minister. I have therefore put in this amendment only with this object that if any such clauses come subsequently regarding marriage, divorce or any other thing, we may be in a position to show that these customs, though they may not be prevalent in any tribe or community or group of family, are prevalent in differently *varnas* and these are very essential. These are the reasons for which I want to add the word " *varnas* " there.

Shri B. K. P. Sinha (Bihar): May I know one thing from the hon. Member ? Is it his contention that while abrogating the *smritis* and *shrutis* we should not abrogate custom and usage ?

Mr. Deputy Speaker: *Shrutis* and *smritis* have not been abrogated; they have been incorporated.

Shri Jhunjunwala ; He will find that the Law Minister recognizes them.

Shri Syanmandan Sahaya: My amendment, as you will see suggests the omission of the two provisions in the sub-clause or item dealing with the expression 'custom and usage'. The purpose of suggesting this amendment is exactly what has been mentioned by the Hon. Law Minister. The Hon. Law minister has said that the definition given here is more or less based on judicial findings on the point and judicial decisions have all been that the words ' customs and usage ' should signify what he has laid down in the definition. The words ' custom and usage ' must have been and have been the subject of various judicial findings and I therefore thought that if that is the legal or judicial meaning which has been given to the words ' custom and usage ', it would not be desirable to encumber or burden this definition by making the provisions here, because that is exactly what they will mean. The reason for my making the submission is

Mr. Deputy Speaker: I can understand. When there is no definition at all he can rely upon judicial decisions.

Dr. Ambedkar: The court will also be open

Mr. Deputy Speaker: Custom is continuous and uniform.

Shri Syamnandan Sahaya: When a certain word is used in a legislation, which has been the subject of judicial interpretation, then that word whenever submitted to judicial interpretation will be liable to the interpretation that judicial decisions have given on it. On the other hand my feeling is that this law makes such revolutionary changes that the normal course of the manner in which the Hindu law has been interpreted will also undergo unthought of changes and my submission is that with the existence, of the provisos, the judiciary may feel that the interpretations and rulings have to be considered afresh and the words ' custom and usage ' may now have to be dealt with not only, for instance, on the ground that it has been continuous, that the rule is certain and not unreasonable or been opposed to public policy. You will see

the difficulty. Sir, in this as you know that ' public policy ' is a matter which is an ever-changing process.

Mr. Deputy Speaker: Nobody denies that. What is the public policy under particular circumstances is the matter that will be decided. ...

Shri Syamnandan Sahaya: Not only under particular circumstances but in the changing conditions of Government. One Government may have one public policy and another Government tomorrow may have another public policy.

Dr. Ambedkar : The word ' public policy ' also occurs in the Law of Contracts.

Mr. Deputy Speaker: Under the Transfer of Property Act, no transfer is valid which is opposed to ' public policy '.

Shri Syamnandan Sahaya: I also support the amendment of Pandit Thakur Das Bhargava with regard to the word ' uniform '. The words ' custom and usage ' in my opinion are liable to lead to difficulties and also further litigation. It is not necessary that a certain rule or usage or custom should have been uniformly followed in a particular family and I shall refer to a Privy Council Case, if the Hon. Law Minister will have no objection. I refer to a very important case which was taken to the Privy Council by the successors of the Moghul Emperors. Now the case was as to who was to be the recipient of the pension paid by the Government of India to the successors of the Moghul Emperors and several people were disputing rights. One said, " I am the successor of the Moghul Emperor " and another said, " I am the successor ". The matter went up to the Privy Council and the point arose as to which of them was circumcised, because one of them was not

Dr. Ambedkar: I know that case.

Shri Syamnandan Sahaya : And the Privy Council held in this particular case that although normally the rule and custom of circumcision obtained in the Muslim families, in the case of the Moghul Emperors, when there was a child from the Hindu wife, circumcision was not necessary and they were entitled to the pension or something like that. Therefore the Hon. Law Minister will appreciate that this uniformity with regard to customs even in a particular family has not been a necessary factor and I think that he will do well to adopt this amendment of Pandit Thakur Das Bhargava, suggesting that the word ' uniformly ' be dropped.

Dr. Ambedkar : This has no judicial value. The distinction there was made between custom and practice. Practice has no judicial value.

Shri Naziniddin Ahmad: I want to speak with regard to the definition of the word ' custom ' to begin with and I must say that I am in entire agreement with the official draftsman.

Shri Syamnandan Sahaya: For once.

Shri Naziruddin Ahmad : I am in general agreement with the Hon. Minister except on occasions when he cannot be made 'reasonable. With regard to

this definition of the word ' custom ' it is not merely the Indian law but it is also the law throughout the world. I have a copy of Holland's Jurisprudence which also lays down that a custom in order to be followed must be reasonable, must be continuous, must not be broken and it must be of ancient standing. This is all that is laid down there. The question of uniformity is regarded in Jurisprudence as absolutely essential. If once a custom is broken, it ceases to bear the character of custom at all. This has always been regarded so. So the mere fact that a custom is broken is enough to break the custom. Therefore, I think the definition as it stands should be supported. So far as judicial decision is concerned, the judicial decisions in all cases must have been or are supposed to have been given in view of these considerations but these are considerations which are essential, which are to be found in books of Jurisprudence and therefore, it is far better to rely upon these essential elements rather than rely upon judicial definitions because judicial definitions might be coloured with regard to the difficulties of a particular case and it is far better to rely upon well-known expressions rather than rely upon judicial decisions. Therefore, I think that the definition in the Bill should remain.

Shri J. R. Kapoor : I have not been able to appreciate the necessity of the two amendments that have been moved by my hon. Friend, Pandit Thakur Das Bhargava, particularly in view of his own view. His view I understand, is that the definition of ' custom ' should be a restricted one and that various sorts of customs in various parts of the country in different forms, in different methods should not be allowed to prevail. That being his view, with which I am in entire agreement, I think that if the amendments suggested by Pandit Thakur Das Bhargava are accepted, the scope, the denotation of the word ' custom ' would be considerably extended and expanded which should not be. The one useful thing about this Bill is that it is going to unify and consolidate the Hindu society in some measure and therefore the less the variations in manners and customs and in the rules applicable to Hindu society, the better it is. The essential basis of this Code is uniformity which it will bring about and we should not get away from that mooring and in the consideration of every clause in this Bill, we should never lose sight of this thing.

11-00 A.M.

Once we lose sight of that, we shall be virtually giving away the basis of this new enactment. What does Pandit Thakur Das Bhargava suggest ? Firstly, he suggests that the word ' uniformly' should be done away with. That would mean that a custom even if it has not been uniformly observed should be a custom under this definition. Obviously, that extends the scope of the definition of custom. Secondly, he suggests that the words ' opposed to public policy ' should be deleted. That, again, means that a custom even though it may be opposed to public policy, according to the prevalent notions of public

policy at any particular time, should have the sanctity of a custom as defined here. That, again, would be extending the scope of custom and not restricting it. I submit these suggestions should not be accepted. To me, it appears that the words 'opposed to public policy' are very necessary and essential. Because, our society, or any society is an ever-growing society and notions about morality, propriety and advisability of a thing change from time to time. We should not put a stop to that desirable change. A custom which has even been judicially recognised at any particular time, may, 10 or 20 years thereafter appear to the society to be not a proper or desirable custom. At that time, it should be open to society and even to the law courts to declare that this custom, though it has had recognition in judicial pronouncements, according to the changed conditions of society and the changed economic and social theories which have been adopted by society, should not be recognised as a valid custom. I therefore submit that this part, as it stands, should be accepted.

I submit the amendment suggested by my hon. Friend Mr. Jhunjhunwala may be accepted because that appears to be a harmless thing. I beg to suggest, Sir, at this stage, if it may not be considered a late stage, to the Hon. Law Minister that the words 'or family' in the substantive clause may be deleted. Because, to me, it appears

Mr. Deputy Speaker: Where is the amendment ?

Shri J. R. Kapoor:that a custom which has been in force only in a particular family should not be given the sanctity of a valid and recognised custom.

Dr. Deshmukh: It has already been given by the Hindu Law.

Shri J. R. Kapoor: We have in the sub-clause the words:

" signifies a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family. "

Mr. Deputy Speaker : The House is aware of that expression. The hon. Member has tabled a number of amendments, he never thought at any particular stage that these words should be dropped. I do not want to allow any time to be spent on this matter.

Shri J. R. Kapoor: I am not moving any amendment. I am opposing this particular part of the clause. I do not think I will have any further opportunity to suggest this. As for my not moving an amendment, I may be permitted to confess that having been very much disappointed in finding that none of my amendments are acceptable to the Hon. Law Minister, I thought, rather than moving an amendment formally, I may informally suggest the thing to him so that he may himself move an amendment to that effect. In that case, it would be more easily acceptable to the House. Anyway, I have nothing further to submit on this point.

Shri Shiv Charan Lal (Uttar Pradesh) : I think all the amendments should

be negated and the clause as it is should be accepted. Pandit Thakur Das Bhargava, being a lawyer—I am surprised to see—says that the words 'opposed to public policy' should be deleted. That is a very necessary thing. As society advances, the opinion of society carries more weight. Anything that is against that opinion should not be acceptable even though it may be an old custom. Pandit Thakur Das Bhargava also wants that the word 'uniformly' should be deleted. By the word 'uniformly' he seems to understand uniformly for all the people. It is not so. It may be the custom of one family. By 'uniformly,' it is meant that it is followed continuously or uniformly and not changed. Therefore, the word 'uniformly' is also necessary.

He says that only those customs for which there are judicial pronouncements should be accepted. This is also wrong. There are certain judicial pronouncements which are now not good law because public opinion has changed. The people do not want that custom to continue. There are certain customs which are very well-recognised, but which have never gone to the courts and on which there are no judicial pronouncements. Therefore, I submit, all the amendments of Pandit Thakur Das Bhargava do not stand anywhere.

In the amendment of Mr. Jhunjhunwala, he wants to add the word *varna*. There are no customs connected with any *varna*. All customs are connected with caste, families, certain areas. I do not know of any custom or any decision of any court where a custom has been recognised as a custom of a *varna*. That has never come before any court. As to the amendment of Mr. Syamnandan Sahaya, he wants to delete the two provisos. These provisos are the life and soul of the whole definition. Therefore, they cannot be deleted. Therefore, Sir, I am in support of clause (i) as it is.

Shri B. K. P. Sinha : I think there is no force in the amendments moved to this clause. This clause, as put in by the Hon. Law Minister is simple and embodies the law as it is. The critics have objected to the words "uniformity" and "public policy". But, it has been laid down by so many decisions and judgements of the various High Courts that a custom to be valid must be uniformly practised. Mr. Syamnandan Sahaya referred to some Privy Council Case in support. This contention that uniformity was not an essential of valid custom. I could not catch him; therefore, I speak subject to correction. There is a distinction between social and religious customs and customs that prevail in the agriculture and trade field. So far as society and religion are concerned, custom and usage are rather inter-changeable terms and there is very little distinction between the two. But, in the case of trade and agriculture, a distinction has been made between custom and usage. Custom is noted for its antiquity; it must come down from time immemorial. Usage is something which is in the process of growth ; it is something new. The Privy Council case of which I know, makes a distinction only so far as trade and agriculture are concerned. But, that is not germane or very relevant to this question,

which is a social and semi-religious question. I have found in so many decisions uniformity is prescribed as a test of the validity of a custom. As regards public policy, I do not know why people have fears on this ground because I find that it has been laid down by the Privy Council, by the Patna, Calcutta and several other High Courts that a custom which is opposed to public policy shall not be valid. In this respect also, I find that the Hon. Law Minister has, in his clause, embodied the law as it is. Moreover, if we go on making an exception in favour of all sorts of customs, what would be the basis and justification for this codification. Codification is mainly done to introduce uniformity and certainty. If we make exceptions in favour of customs prevailing in families, in different territories, etc., there would be no uniform law for the whole country, and the whole object of codification would be defeated. The second object of codification is that there will be something handy to which everybody can refer, with certainty. If we make exceptions in favour of customs, etc., this certainty would have gone. Therefore from any point of view, I see no reason why this clause should not be passed as it is, and why any amendment should be accepted.

Mr. Deputy Speaker : I will now call upon the Hon. Law Minister.

Babu Ramnarayan Singh (Bihar): Sir, I have also to say something.

Mr. Deputy Speaker: But has not enough been said already ?

Shri Bhatt: (English translation of the Hindi Speech). I have got an amendment.

Mr. Deputy Speaker: Which is your amendment ? I have disallowed it.

Shri Bhatt: You have allowed it.

Mr. Deputy Speaker: But there is no particular charm about it. It is only a matter of recasting the word slightly.

Shri Bhatt: That I am to explain as to why I was putting it. I am not moving it simply for recasting of the words.

Babu Ramnarayan Singh: I kept standing for long.

Mr. Deputy Speaker: What should I do ?

Shri V. J. Gupta (Madras) : Sir, I do not want to make a speech, but I want to get a doubt cleared.

Babu Ramnarayan Singh: Your eye should have caught me.

Mr. Deputy Speaker: It does not mean that just because a hon. Member stands a number of times he catches my eye. I must have some discretion in regulating the debate, and I might call upon certain Members and not certain others. But if there is yet time, we shall see.

Dr. Ambedkar : **There is only one point to be explained and**

Shri Bhatt: You have given me time.

Mr. Deputy Speaker : All right. I will call the Law Minister later. But after all it is a very formal and verbal matter that is dealt with in this amendment.

Babu Ramnarayan Singh: No, Sir, it is important too.

Shri Bhatt : The amendment moved by me is not verbal. The thing which I

want to stress in it may possibly not be acceptable to the Hon. Minister and he may not be inclined to change his attitude. As a matter of fact, as a Lawyer I am not so competent as to convince him. But I want to tell him and draw his attention to certain things lacking in the measure that is being sponsored by him.

The first point is about the definition of ' custom and usage ' which he has put here in an insufficient form. On reconsideration he will himself feel inclined to reduce or add a few words to convey the complete sense.

By ' custom and usage ' we mean traditions, conventions and routine practices. The definition being propounded by him for it limits the sense to four essential attributes, viz., continuity, uniformity, certainty and its not being opposed to public policy. In its place I am thinking of a simpler definition which may precisely convey the same sense. But he has talked of uniformity. What does this uniformity mean ? Different castes have their different customs. Even a single caste, spread roughly over a thousand villages, allows various concessions and different usages to the separate circles, and therefore even in a single caste there is a separate sort of uniformity for separate places. There are variations. Therefore the word uniformity would give rise to a lot of litigation and benefit the lawyers. It may therefore be dropped as variation is inevitable.

If a community made certain variations, it being its usage, it was likely to pay a fine of Rs. 50. But now-a-days Rs. 50 mean nothing and cannot have affect to the desired extent and therefore if one suggests to increase the fine to Rs. 100 you would say that uniformity is not there. Today you change a thing which was good till yesterday, then where is uniformity? Therefore, as regards uniformity we should agree that variations are bound to be.

I shall quote here from Article 13 of the Constitution to explain how the word ' law ' has been defined there:

" law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. "

Here ' territory of India ' does not mean that there is going to be only one custom throughout India. There is not going to be any one order or notification applicable throughout India. The Government of India decides its policy for each State according to circumstances prevailing there.

I also want to tell you what is meant by ' law in force ', and this will explain what I understand from the words ' variations ' and ' uniformity ':

" ' laws in force ' include laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. " So, I want to suggest that the word 'uniformity' used here will make complications and nothing will be lost if it is dropped. After all what does this ' custom ' mean ? We are educated enough to understand that ' custom ' is an

usage prevalent from the time of our forefathers. You might quote certain thing prevalent upto yesterday, in which you have made a change today, but, for that reason, shall we not take it as custom and will it not affect us ? It may not affect economists, but it is not proper. Therefore, if you want to bring the word ' custom ' and allow some concession according to .it, it may be put in a way that people may get something through it. ' Custom ' has been defined in the Law Dictionary as follows: " It must have been continued, peaceable, reasonably certain man runs not to the contrary.

" It must have been continued, peaceable, reasonably certain, compulsory and not left to the option of every person whether he will use it or not, and consistent with other customs, for one custom cannot be said to be in opposition to another. " These things should be taken into consideration. I have suggested that the word '* continuous " was equivalent to ' having been in vogue ' This is not a wrong word, ' in vogue ' being a comprehensive word of the English language meaning a thing prevalent and in practice. That is why I have proposed ; ' having been in vogue for a long time ', ' it has been in practice for a long time '.

The second thing which I have put is: ' which has obtained the force of law '. This is a simple thing and if accepted will become a recognised convention.

The third point I have taken is about ' public policy ' or ' public morality '. I fail to understand that if conventions find place in the proposed measure, where was the necessity for the word ' public policy ' ? You might say that only accepted customs will be allowed at a place and not others, then which customs will be against public policy ? What does ' public policy ' mean ? The word might have dropped from some lawyer or judge and we are now using it, but we should be clear about the meaning of ' public policy '. I think there is no necessity for any such expression as ' public policy ' or ' public morality '. After all where there will be a place in law for conventions, only there the conventions will be followed. So I do not find any necessity for these words.

Now I want to say something about caste and sub-caste. The words are not my own; they have been used in Articles 15 and 16 of our Constitution. We used the word ' community ' in Clause 2 yesterday. We have not used the word ' community ' but the word ' caste ' in the Constitution. In my opinion the words ' castes and sub-castes ' will be more proper here in place of the word ' community '. I do not mean that the word ' community ' may be dropped as we have included it only yesterday, but there is no harm if these two words are also added.

With these words I move my amendment. There is very little likelihood of its being carried, but the Hon. Minister will please think over it.

Babu Narayan Singh : (English translation of the Hindi speech). Sir, I submit that the decision arrived at by you is very nice and acceptable to all. But sometimes you make decisions in such a haste that it pinches us. Therefore, I entreat you not to decide in haste on the ground that there has

been sufficient debate upon the measure. I submit that I also stood up so many times, your eye should have caught me and I should also have been allowed to speak.

Shri V. J. Gupta : I have a doubt to be clarified. In the definition it is said:

" The expressions ' custom ' and ' usage ' signify a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family.

As you know in our parts marriage between a young man and his maternal uncle's daughter is allowed in many communities. It is a common custom though it is not uniformly or continuously observed.

Mr. Deputy Speaker: You must read the entire chapter. There is a special exception made.

Shri V. J. Gupta : Further, it is said " opposed to public policy ". A practice is called a custom when observed by all the people of a locality. When it is observed by all people uniformly how can it be opposed to public policy ?

Dr. Deshmukh: I want to oppose this.

Mr. Deputy Speaker: You can vote against it.

Babu Ramnarayan Singh: We would like to speak also on it.

Mr. Deputy Speaker : I know Hon. Members have a right to speak but I have looked round and I am satisfied that there has been a sufficient debate. If the Hon. Member wants that the formality of a question being put should be observed, let someone move it and I shall put it to the House.

Shri Santhanam: Sir, the question be now put.

Mr. Deputy Speaker: The question is: " That the question be now put. " The motion was adopted.

Babu Ramnarayan Singh : My voice was louder than their voice !

Dr. Ambedkar: In my previous intervention I had explained already both the position of this sub-clause in relation to clause 4 and how the question of custom has been dealt with generally *visa-vis* the Code.

With regard to the exact terms which have been used to define the expression ' custom ' I am sorry to say that it is not possible for me to accept any of the amendments suggested. This definition, as I have said, has been copied verbatim from judicial decisions of the highest tribunal in our country as well as in all other countries, where custom has been judicially defined. I do not think therefore that any ground has been made out for me to depart from the definition proposed in the sub-clause.

Mr. Deputy Speaker: The question is:

In clause 3, for the words " unless there is anything repugnant in the subject or context " substitute " unless the context otherwise requires " .

The motion was adopted.

Mr. Deputy Speaker: The question is:

In clause 3, renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv) and (v) and insert the following as item (i), namely :

" (i) ' Aliyasantana law ' means the system of law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949). "

The motion was adopted.

Mr. Deputy Speaker: With the re-numbering of the parts as adopted by the previous amendment all the amendments relating to part (i) now relate to the present (ii). I shall put them to the House one by one. The question is:

In part (i) renumbered as part (ii) of clause 3, for the words "among Hindus " substitute the words " among persons to whom this Code applies ".

The motion was negatived.

Mr. Deputy Speaker: The question is: In part (i) renumbered as part (ii) omit the words " and uniformity ".

The motion was negatived.

Mr. Deputy Speaker: The question is: In part (i) renumbered as part (ii) of clause 3— (a) after the words " group or family " occurring in line 4, add the following:

" or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family "; and (b) Omit the first proviso. The motion was negatived.

Mr. Deputy Speaker: The question is:

In part (i) renumbered as part (ii) after the word " tribe " insert the word "Varna".

The motion was negatived.

Mr. Deputy Speaker : in view of this amendment No. 413 having been negatived amendment No. 414 does not arise. The question is:

Omit the provisions to part (i) re-numbered as part (ii) of clause 3. The motion was negatived.

Mr. Deputy Speaker: The question is:

For part (i) renumbered as part (ii) of clause , substitute the following:

" (ii) the expressions ' custom ' and ' usage' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family:

Provided that the rule is certain and not unreasonable; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family. "

The motion was negatived.

Mr. Deputy Speaker: The question is:

" That part (i) renumbered as part (ii) of clause 3, stand part of the Bill. "

The motion was adopted.

Shri Naziruddin Ahmad : I have amendment No 377 to part (ii).

Dr. Ambedkar : I would very much like to make suggestion here because that will shorten the labour. As you will see, some of the definitions given in part (ii) not only apply to marriage and divorce but they also were intended to

apply to the other parts of the Code. In view of what has transpired, it would be necessary for me at a subsequent stage to amend this definition and to narrow it down to the provisions relating to marriage and divorce. Therefore, what I was going to suggest to the House is to pass this in a formal manner without attaching any great importance to it, because I shall come back to it when I deal with consequential amendments and then the matter may be dealt with at great length if they want. For the moment I am not very particular about this definition because I see that I will have to amend it.

Mr. Deputy Speaker: Is there any objection to allowing this to stand over this part alone ?

Dr. Ambedkar: I have no objection.

Mr. Deputy Speaker: In view of what has transpired, some consequential amendments have to be made later. So, I will allow this part to stand over.

Shri Santhanam: It will mean the whole clause standing over. But after passing parts (viii) and (ix) the whole clause has to be put.

Mr. Deputy Speaker: It is in the discretion of the Chair to put the whole clause or put it part by part. As a matter of fact, I have placed it part by part and we have already adopted two parts.

Shri Bharati: Definitions may be added at any time.

Mr. Deputy Speaker : If the Bill is going to be restricted in scope then what is the harm in doing so ?

Shri Naziruddin Ahmad : My amendment is for this very purpose, Sir.

Mr. Deputy Speaker: The Hon. Member has thought much in advance and the Hon. Minister is only accepting what he is saying. So, this matter will stand over.

Shri Naziruddin Ahmad: I have no objection.

Shri Bharati : The words " full blood " and " half blood " do not occur in the part of the Code which we intend to pass. Originally we had intended to pass the whole Code and these words were necessary. Now that these words do not occur in this part we may as well drop them.

Dr. Ambedkar: They may arise in connection with prohibited degrees, *sapindaship* and so on. Therefore, my suggestion is that it might be desirable at this stage to pass the part and if at a later stage I find it is necessary to make some amendments I will do so.

Shri Bharati : After all, these are definitions of words which must have a reference to the words occurring in the subsequent chapters. If we do not see these words at all in the chapters on marriage and divorce I do not see any virtue in having the definition.

Shri Naziruddin Ahmad: This part is amended by amendment No. 360 which is the latest version of this part. But even there terms like " uterine blood " appear.

Dr. Ambedkar : My suggestion is that the better thing would be to allow these definitions going through ; if subsequently we find it necessary to

change we shall change it, because, as I have already stated, I reserve the right of bringing appropriate amendments in view of what has happened with regard to this Code.

Mr. Deputy Speaker: In any way, without any doubt this is required for the chapters on marriage and divorce. And these terms are there both in the original part and in the amended one. Now I will put part (iii) to vote. The question is:

" That part (iii) renumbered as part (iv) of clause 3 stand part of the Bill. "

The motion was adopted.

Mr. Deputy Speaker: The question is:

In the explanation to item (iv) re-numbered as (v), for " this clause " substitute " clauses (iv) and (v) ".

The motion was adopted.

Mr. Deputy Speaker: The question is:

" That part (iv) renumbered as part (v), as amended, stand part of the Bill. "

The motion was adopted.

Mr. Deputy Speaker: The question is:

In clause 3 after part (iv) renumbered as part (v), add the following new part:

" (vi) ' Marumakkattayam law ' means the system of law applicable to persons—

(a) who, if this code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act, II of 1100, the Travancore Ezhava Act, III of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107, the Cochin Nayar Act of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras, and who, if this Code had not been passed, would have been governed by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law; "

The motion was adopted.

Shri Naziruddin Ahmad; This is subject to reconsideration.

Mr. Deputy Speaker : No. We have passed the Aliyasantana law.

Dr. Ambedkar: The substance may be reconsidered.

Mr. Deputy Speaker: So far as the language is concerned, the

Hon. Member is always at liberty to suggest any modifications. The question is: In clause 3, after the definition of " Marumakkattayam law " add the following new part:

" (vii) ' Nambudri law ' means the law applicable to persons who, if this code had not been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act

(XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106) ; " The motion was adopted.

Mr. Deputy Speaker; Now, we come to part (viii)—that is the original part (v). It says ' " Part " means any Part of this Code '— Does he want it to go in?

Dr. Ambedkar: For the moment, it is very difficult for me to say what I want to amend or excise. I want time to consider. Later on I may change it to 'Bill' or ' Chapter '.

Mr. Deputy Speaker : Then I will leave the origin (v) [the present (viii)] to stand over.

Now, I come to definition of " prescribed ".

Capt. A. P. Singh (Vindya Pradesh) : I want to add the definition of " Kul " in the definition clause.

Mr. Deputy Speaker: Let us finish these first. The question is : " That part (vi) renumbered as part (ix) of clause 3 stand part of the Bill. " The motion was adopted.

Shri Bharati; Is it understood that the word ' Code ' may be changed?

Dr. Ambedkar; It will be appropriately changed.

Mr. Deputy Speaker: Part (vi) relating to definition of ' prescribed ' as renumbered is accepted. Now, we come to part (vii) relating to definition of ' related '. It is renumbered as (x). The question is : " That part (vii), renumbered as part (x) of clause 3 stand part of the Bill. " The motion was adopted.

Mr. Deputy Speaker : Now we come to part (vi) of amendment No. 5 by Dr. Ambedkar. It says—in item (viii) as renumbered, for 'any' substitute 'a'.

Dr. Ambedkar : Originally it was ' any part '. I now say ' a part '. But you will remember that you have held over renumbered Part (viii). So, this will also stand over.

Mr. Deputy Speaker : Then we come to the definition of ' son '— part (viii) of the original clause.

Pandit Thakur Das Bhargava: I have got an amendment here. It is No. 127.

Dr. Ambedkar: It is a kind of power of attorney.

Shri Rajagopalachari: It is a kind of adoption in Punjab.

Sardar Hukam Singh: It is not power of attorney. It is made-easy.

Pandit Thakur Das Bhargava: I beg to move:

For part (viii) renumbered as part (xi) of clause 3, substitute the following:

" (xi) ' son ' includes an appointed heir and an adopted son whether appointed or adopted before or after the commencement of this Code but does not include an illegitimate son. " As the House probably knows, the appointment of an heir is a special custom in Punjab.

Mr. Deputy Speaker : We were considering the definition of ' son '. So far as an heir or a person who is appointed as an heir is concerned, it may be that he may be appointed as an heir for the purpose of the property. In fact, it

may be a person who may be fit enough to marry the daughter of the person appointing him as the heir.

Pandit Thakur Das Bhargava: By custom, he is equivalent to a son. Therefore, he cannot marry his own sister. The person who is appointed as heir carries an intimate relationship. He is just like a son for all practical purposes.

Mr. Deputy Speaker: Even to the extent of coming into the prohibited degree?

Pandit Thakur Das Bhargava : Yes. He comes into that family. There are several customs with regard to appointed heirs in the territory which is now under the Commissionship of Ambala. It is just like adoption. There is absolutely no difference between adoption and the appointment of an heir. The ceremonies even are sometimes the same. The person who is appointed as heir is treated more or less as the son. He cannot marry the daughter of the appointer, because the daughter of the appointer is his sister. No person in Punjab will ever believe that the daughter of the appointing father can possibly be married to that boy. He could not marry even a cousin. He is treated just like a son. The only difference is that, so far as the eligibility of an heir is concerned, he may be a married man with sons and daughters.

Dr. Ambedkar: He can also be a man with *dhadi*.

Shri Rajagopalachari : The hon. Member will perhaps educate us in the matter—is it open, according to that custom to appoint one's own son-in-law as his son ?

Pandit Thakur Das Bhargava : In that case he is called ' *ghar- javai* '.

Mr. Deputy Speaker: Corresponding to this there is a custom in the south—it is called ' *illatom adoption* '.

Pandit Thakur Das Bhargava : This custom is not only judicially recognised; it is so widely prevalent that it is as good as law. It is a fully established custom, it has got more force, perhaps, than the ordinary law of the land. It is universally acknowledged among the Hindus, Sikhs as well as the Muslims. The relationship created thereby is not merely of gift, or mere appointment of an heir. The relationship is personal; the appointed heir is treated as a son and he lives with the father.

Dr. Ambedkar: For property purposes.

Pandit Thakur Das Bhargava : For property purposes as well as for relationship. He cannot marry the daughter, as an outsider does. Therefore it is not a question of merely property; it is a question of personal relationship.

Mr. Deputy Speaker: Can the son be older than the father ?

Pandit Thakur Das Bhargava : He can be older, just as a nephew can be older than the person adopting. Supposing a brother adopts the son of a brother. The son of a brother may be older to him in age than the person appointing.

Mr. Deputy Speaker: Is there any ceremony attached to it ?

Pandit Takur Das Bhargava : It is done in several ways. It must be made public ; so there is a registered deal in some cases. The entire family is collected and the boy is accepted as heir. In some places even the ceremony is gone through. Practically it is tantamount to adoption.

Mr. Deputy Speaker: In those parts where this custom is prevalent, is there regular adoption as well ? Or is it the contention that wherever this custom of having ' appointed heir ' prevails, regular adoption does not take place ?

Pandit Thakur Das Bhargava: This is, as a matter of fact, in addition to that.

Mr. Deputy Speaker: Can a man have both, an adopted son as well as an appointed heir.

Pandit Thakur Das Bhargava : Even in a family, one brother may have an adopted son, while another brother may have an appointed heir. But there is no difference so far as relationship is concerned. This custom obtains among Muslims as well.

Khwaja Inait Ullah (Bihar) : In Muslim law there is no adoption.

Pandit Thakur Das Bhargava: I am not dealing with Muslim law ; I am speaking of Muslim customs. Almost every Punjabi Muslim follows custom.

Mr. Deputy Speaker : But it is so prevalent that it can be brought under this definition.

Pandit Thakur Das Bhargava: Nobody can doubt the validity of this custom. You can take any treatise on customary law and you will find that the appointment of a heir is a customary practice.

Shri Radhelal Vyas: Is a female appointed as an heir ?

Pandit Thakur Das Bhargava: But she cannot become a son.

Dr. Ambedkar: In view of the fact that it has been decided to confine this Bill to marriage and divorce, the point raised by my Hon. Friend may very well come when we are dealing with the matter of adoption. There we can discuss this question as to whether we can include what he calls an appointed son in the definition of adopted son. There, if he is able to satisfy that custom is a custom which this House should permit, in view of the definition which we have just now passed, we will consider that question. Here we are for the moment dealing with marriage and divorce.

Pandit Thakur Das Bhargava: But you have used the word " son " here; otherwise there will be no need for any definition.

Dr. Ambedkar: As you know in the Chapter on Adoption, we have tried to introduce a uniform system, we are not recognising any of the variants of adoption. We say that adoption should be one common system throughout. We have also said there that so far as the ceremonies of adoption are concerned, they may be different. We do not bother about it. If the appointment of a son is satisfactory from the point of view of the definition of adoption, namely, the giving and the taking, the putting of the sugar in the mouth of the boy and the performance of some sacrifice, well the particular

ceremonies by which they do it will not make the appointed son an adopted son.

Pandit Thakur Das Bhargava: Unfortunately, I have not been able to express myself in a way as to carry conviction to Dr. Ambedkar.

Mr. Deputy Speaker: The point raised by Pandit Bhargava has relevance to marriage as well.

Dr. Ambedkar: I am afraid, without a perfect understanding of the custom, I am not able to come to any decision—the circumstances, the custom, the reasonableness or otherwise. Nor has my friend been able to give us any clear picture. I want to apply my mind to that subject and come to a conclusion as to whether it would be possible for Government to accept his proposal. All of a sudden it is not possible.

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Pandit Thakur Das Bhargava: Let it be held over.

Dr. Ambedkar: We can add it afterwards.

Mr. Deputy Speaker : May I suggest one course ? As it is, there is no objection to passing this. The only attempt is to include some other category. Therefore this may be passed now, because we are not passing the entire clause 3. We can add one more category later. With that understanding I will put this part to the vote of the House the question is:

" That part (viii) renumbered as part (xi) of clause 3 stand part of the Bill. "

The motion was adopted.

Mr. Deputy Speaker: Now we will proceed to clause 4.

Capt. A. P. Singh : I have already requested you that one definition should be added after part (viii). The amendment is No. 378, and is about the definition of *Kula* . It may surprise some hon. Members as to why I want that this word should be defined. But if you see amendment No. 387, there I have said that " the parties do not belong to the same *Kula* where by custom such marriages are prohibited. " I want this word to be defined here so that marriages may not take place within the same *Kula*.

Dr. Ambedkar : May I just explain the position. I am afraid that this amendment, although it is a definition, really relates to clause 7—Essentials for a valid Dharmik marriage—where certain conditions for a valid Dharmic marriage have been set out. My friend wants substantively to add one more condition that the parties to a marriage should not belong to the same *Kula*. If that amendment is accepted, then and then alone would a definition of ' *Kula* ' be necessary, although it may be argued that ' *Kula* ' is such a well known term that no definition is necessary. But suppose when we are dealing with clause 7 this matter is taken up and the House accepts the amendment, then and there we can introduce the definition of ' *Kula* '. Therefore no definition of ' *Kula* ' is necessary now.

Capt. A. P. Singh : My difficulty is this. Whenever any such thing comes it

is generally said " The word has not been defined ". Therefore, I wanted that " Kula " should be defined now and let us be clear on this point. But if it can be done later I have no objection.

Mr. Deputy Speaker : If in clause 7 this is not going to be accepted, the definition here will become useless. But if on the other hand it is accepted and a definition is found necessary a consequential amendment will be made here. I am not closing the door.

Dr. Ambedkar : Or it can be done by an Explanation as to what is meant by ' Kula '.

Mr. Deputy Speaker: Clause 3 is not completed, or, as the Hon. the Law Minister said, we can give it as an Explanation.

Capt. A. P. Singh: Then it may be held over.

Mr. Deputy Speaker: Now we shall take up clause 4.

Clause 4—(Overriding effect of Code).

Dr. Ambedkar : I beg to move : For clause 4, substitute :

" 4. *Overriding effect of Code* .—Save as otherwise expressly provided in this Code :—

(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code. ' The purpose of the amendment is this. As the House will see, we had originally one single clause with no sub-clauses and the provisions of the Code relating to custom and interpretation of law and those relating to other laws passed and in force were put together. It was felt that it was not the desire of this Bill to abrogate all law but only in so far as it is inconsistent with the provisions of the Bill. I therefore, felt that the best course was to split clause 4 into (a) and (b) leaving rule, interpretation and custom to be covered by (a) and any law in force to be dealt with by (b) with the limitation that no law shall be abrogated unless it was inconsistent with this Code. It is not our intention that all laws should be abrogated by this. That is the purpose of this amendment.

Mr. Deputy Speaker : Amendment moved : For clause 4, substitute:

" 4. *Overriding effect of Code*.—Save as otherwise expressly provided in this Code :—

(a) any text, rule or interpretation of Hindu Law or any custom or usage .in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code. "

Dr. Deshmukh: I beg to move:

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, omit the words " or any custom or usage ". Shall I speak on it now or afterwards ?

Mr. Deputy Speaker : I shall first have all the amendments that hon. Members intend moving and then allow the discussion. Amendment moved:

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, omit the words " or any custom or usage ".

Dr. Ambedkar: I do not understand it.

Mr. Deputy Speaker : It is that if there is a custom it shall continue. I take it that the object of the amendment is that notwithstanding any of the provisions of this Code, any custom in force before the commencement of the Code will override what is now sought to be abrogated. Is that so ?

Dr. Deshmukh: Yes.

Mr. Deputy Speaker: We will assume two things. Wherever it is not provided for, the custom will prevail, there is no doubt about it. But wherever there is some provision here, the custom will be abrogated. Custom, where it is inconsistent, will be abrogated by the amendment. The hon. Member wants that custom, not only where it is provided for here but also where it is not provided for, must override the text of law. That is the position. I will ask to reply to this later on.

Sardar Hukam Singh: I beg to move: In clause 4, omit the words " or any custom or usage "

Mr. Deputy Speaker: It is the same thing.

Sardar Hukam Singh: My suggestion is that custom would continue in spite of this Act.

Mr. Deputy Speaker: Amendment moved :

In clause 4, omit the words " or any custom or usage ".

Pandit Thakur Das Bhargava: I beg to move: For clause 4, substitute the following:

" 4, any text, rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with the Code. " This is the positive side of the matter.

Mr. Deputy Speaker : Whatever is not provided in this Code shall have effect.

Dr. Ambedkar: That would be so, when we close with clause 55.

Pandit Thakur Das Bhargava: What I say is that these things will persist as a positive fact and there is not much difference between the two.

Mr. Deputy Speaker : Amendment moved :

" 4. Any text, rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with in this Code. "

Pandit Thakur Das Bhargava : There is another amendment in my name

No. 449. I beg to move: For clause 4, substitute the following:

" 4. any custom or usage in force immediately before the commencement of this Code shall be binding and shall override all texts, rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce. "

This is an antithesis of section 4 and this is only to bring out into ironical relief the place what my Hon. friend Dr. Ambedkar wants to give to ' custom ' which I personally do not approve.

Mr. Deputy Speaker : I am trying to put down categories so that I may insert all the amendments under a particular group. Amendment No. 128 relates to custom wherever there is no provision of law in this Bill. Then amendment No. 449 says that notwithstanding any provisions in this Bill all the previous custom shall stand.

Shri Santhanam: It is a direct negation of clause 4.

Mr. Deputy Speaker: Amendment moved: For clause 4, substitute the following:

" 4. any custom or usage in force immediately before the commencement of this Code shall be binding and shall override all texts, rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce. "

Shri Naziruddin Ahmad: I beg to move: For clause 4, substitute the following:

" 4. All the texts, rules or interpretations of Hindu Law or all customs and usages and all other laws in force immediately before the commencement of this Act, in so far as they may be inconsistent with this Act, shall, to the extent of the inconsistency, cease to have effect. "

I have another amendment. Sir.

Mr. Deputy Speaker: Is it necessary ?

Shri Naziruddin Ahmad : That is more elaborate. I beg to move : For clause 4, substitutes the following:

"4. All texts relating to and all rules of interpretation of Hindu Law in the sacred books or in judicial pronouncement or superior courts in India or of the Judicial committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediately before the commencement of this Code, in so far as they are inconsistent with this Code, shall, to the extent of the inconsistency, cease to have effect. "

Mr. Deputy Speaker: This is in another form.

Shri Naziruddin Ahmad: It is in a more elaborate form, containing more elements.

Mr. Deputy Speaker: It is different in substance.

Shri Naziruddin Ahmad: Though in minor details.

Mr. Deputy Speaker: Amendments moved: For clause 4, substitute the

following:

" 4. All texts, rules or interpretations of Hindu Law or all customs and usages and all other laws in force immediately before the commencement of this Act, in so far as they may be inconsistent with this Act, shall, to the extent of the inconsistency, cease to have effect. "

For clause 4, substitute the following:

" 4. all texts, rules or interpretations of Hindu Law in the sacred books or in judicial pronouncement of superior courts in India or of the Judicial Committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediately before the commencement of this code, in so far as they are inconsistent with this Code, shall, to the extent of the inconsistency, cease to have effect. "

Shri Jhunjunwala: I beg to move: To clause 4, add the following proviso:

" Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force, immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion to the followers of which religion or religions this Code will apply:

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it."

Sir, then I have another amendment, No. 418.

Mr. Deputy Speaker: Is it a repetition of No. 130?

Shri Jhunjunwala : This is not a repetition but slightly different. I beg to move:

In the amendment proposed by Dr. Ambedkar, to the proposed clause 4, add the following Proviso:

" Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies. "

Mr. Deputy Speaker : Who is to decide what the distinct culture is ? Whatever may be the substance so far as any Code is concerned, before I put it to the House, there must be some definite thing which is enforceable in a Court of Law.

Shri Jhunjunwala : That is found in Article 29 of the Constitution that different sections of society have got different culture and that should be conserved.

Mr. Deputy Speaker: The hon. Member wants distinct culture to be established in a court of law.

Shri Jhunjunwala: It is in the Constitution itself.

Mr. Deputy Speaker: There is no definition of culture as there is a definition of custom as it is provided for here. I am not aware if there is any judicial interpretation of what distinct culture is up till now.

Shri Jhunjhunwala: That is already in the Constitution.

Shri Santhanam: It must be in the directive principles.

Dr. Ambedkar : It must be somewhere in the directive principles or it might be in the provisions relating to religion and so on.

Mr. Deputy Speaker : amendments moved : To clause 4, add the following Proviso:

" Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force, immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion or any other religion to the followers of which religion or religions this Code will apply;

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it.

In the amendment proposed by Dr. Ambedkar, to the proposed clause 4, add the following Proviso:

Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies. "

Shri Sarwate (Madhya Bharat): I beg to move: To clause 4, add the following Proviso:

" Provided that the Legislature of a State may, by legislation passed by a majority of the total number of its or their members, provide that any of the provisions of this Act shall not apply to that State, or shall apply to that State with such modifications, as may be included in the legislation. "

Mr. Deputy Speaker: How does it arise in this clause ? Any amendment must be relevant to the clause that is on hand.

Shri Sarwate : Because this would supersede all laws which are inconsistent. As the clause stands at present, it has the effect of superseding all the laws which the State might have passed before.

By this amendment I wish to give them the power, if they so wish, in future to restore them. There may be certain provisions which may not be applicable to the State. That State, if otherwise it has the power under the Constitution to legislate, should have the power and it should not be precluded from further legislating on this matter owing to the effect of this clause.

Mr. Deputy Speaker : I do not understand what this amendment means. This amendment at any rate, must have relation to clause 1. Then, I think we have disposed of a similar amendment with reference to clause 2.

Dr. Ambedkar: Pandit Malaviya's amendment was more or less to the same effect.

Mr. Deputy Speaker : Apart from this, this is a concurrent subject. If the local conditions and circumstances require a State Legislature to make any law, that law has to receive the assent of the President. If it receives the

assent of the President, to that extent, the provincial law will override or modify this law. That provision is there in the Constitution. I do not know how far we can make a law here which will override or remove the need for the President's assent in a concurrent subject. A provincial legislation cannot have overriding effect unless the President's consent is there. Indirectly, we are now trying to say that notwithstanding the need for the President's consent under the Constitution, a provincial legislature can pass a law even in a concurrent subject. How can you do away with the right of the President. I think it seems to be unconstitutional.

Shri Sarwate : The provisions of the Constitution are not superseded ; they also go along with this. If for a provincial legislation that pre-condition is necessary, that pre-condition is attached. It does not mean that that is taken away.

Mr. Deputy Speaker : It does away with the wholesome provision that there ought not to be any inconsistency between the laws passed by the Central legislature and by the State legislature. The state legislature could not be clothed with power, except in exceptional circumstances, to make such laws. The President must give his consent. I do not know how we can pass provision overriding all this. On these grounds it has already been voted upon by the House under clause 2 ; it also militates against the provisions in the Constitution. Is it necessary that we should take up this amendment ? Any other amendment ?

Dr. C. D. Pande (Uttar Pradesh): I have an amendment, sir.

Mr. Deputy Speaker: Already tabled ?

Dr. C. D. Pande : Already tabled, but not listed so far. I have got a copy.

Dr. Ambedkar: I have not got a copy.

Dr. C. D. Pande: At least I have been supplied with one copy.

Mr. Deputy Speaker : When was notice given ?

Dr. C. D. Pande : I gave notice in the Notice office this morning and they have given me this copy. This has got to be moved. In any case, the office has given this copy to me ; it may have been given to the Hon. Law Minister as well.

Mr. Deputy Speaker : Amendments will be pouring in everyday in the morning. This is only the first of its kind. We had similar amendments also. I do not propose to waive the notice for such amendments unless the Hon. Minister sponsoring the Bill is willing to accept them.

Pandit Thakur Das Bhargava : With your permission. Sir, I beg to move amendment No. 420 in my name.

Mr. Deputy Speaker: The same amendment in another form.

Pandit Thakur Das Bhargava: There is difference. There is a small error here; it is wrongly typed. It should be " in so far as it is inconsistent " .

Mr. Deputy Speaker: That has been provided for.

Pandit Thakur Das Bhargava : That has not been provided for. The

original clause 4 says:

" Save as otherwise expressly provided in this Code, etc. " These words are not there.

Dr. Ambedkar: The words are there:

"Save as otherwise expressly provided in this Code. "

Pandit Thakur Das Bhargava: I say that so far as this Code goes, any custom shall cease to have effect.

Mr. Deputy Speaker : The matters must have been dealt with in this Bill.

Pandit Thakur Das Bhargava : That is not necessary. We make a provision that custom is saved and by the force of that section, custom is saved.

Mr. Deputy Speaker : Let us see what the objection is in principle. What this clause wants to do is whatever may be the custom, in so far as it is provided for by this Bill, the provisions of this Code will have to prevail except in so far as a specific reservation is made. What is his objection ?

Pandit Thakur Das Bhargava : This is an amendment to the old clause 4. There is no question of inconsistency etc. there.

Mr. Deputy Speaker : Only in cases where it is inconsistent, the Law must override. If it is not, it may continue.

Pandit Thakur Das Bhargava: This is an amendment to the original clause 4. It is quite different from the new clause 4. If you adopt the amendment moved by Dr. Ambedkar, then, it may be unnecessary.

Dr. Ambedkar: That is my amendment.

Pandit Thakur Das Bhargava: I am in agreement with your amendment; but I have given a different amendment.

Dr. Ambedkar: What is before the House is my amendment.

Pandit Thakur Das Bhargava: The original clause 4 does not consider the question of inconsistency at all.

Mr. Deputy Speaker : I am not able to follow the need for this amendment.

Shri Santhanam : He wants to restore the original wording that the custom should be invalid to the extent of inconsistency.

Dr. Ambedkar : We have never used the word 'inconsistent ' even in the original clause. The original clause was:

" Save as otherwise expressly provided in this Code, any text, rule, or interpretation of Hindu Law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code. "

It was an absolute thing with regard to law and custom.

Pandit Thakur Das Bhargava: In clause 4 as it stood in the original Bill, there is no reference to inconsistency. It is absolute. My amendment seeks to amend the clause in two ways : in the first place these words are not there : ' save as expressly provided etc. '. Secondly, the question of inconsistency is absent in the original clause. Then all customs and texts of Hindu Law shall

prevail but to the extent of inconsistency only they would not have effect. Otherwise whatever is provided in this Act will have effect. With your permission. Sir, I move amendment No. 420, with this correction. I beg to move:

For clause 4, substitute the following:

" 4. Any text, rule or interpretation of Hindu Law and any law, custom or usage in force immediately before the commencement of this Code shall in so far as it is inconsistent cease to have effect with respect to the matters dealt with in the Code. "

Mr. Deputy Speaker : Amendment moved :

"4. Any text, rule or interpretation of Hindu Law and any law, custom or usage in force immediately before the commencement of this Code shall in so far as it is inconsistent cease to have effect with respect to the matters dealt with in the Code. "

Shri Syamnandan Sahaya : I beg to move: In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, after the words " this Code ", where it occurs for the second time, insert the words " in so far as it is inconsistent with any of the provisions contained in this Code ".

Mr. Deputy Speaker: In part (a) ?

Shri Syamnandan Sahaya: Yes.

Mr. Deputy Speaker: The object of the Law Minister seems to be that once a particular matter is dealt with here, you need not go to any other Code. But the suggestion of the amendment seems to be that it is only in cases where the provisions are inconsistent with the provisions of the Code that the code provisions will prevail.

Shri Syamnandan Sahaya: That is exactly my point.

Mr. Deputy Speaker : Amendment moved : In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, after the words " this Code ", where it occurs for the second time, insert the words " in so far as it is inconsistent with any of the provisions contained in this Code ". And so the following amendments have been moved: No. 6 of Dr. Ambedkar, No. 450 of Dr. Deshmukh, No. 129 of Sardar Hukam Singh, Nos. 128, 420 and 449 of Pandit Thakur Das Bhargava, Nos. 380 and 419 of Shri Naziruddin Ahmad, Nos. 130 and 418 of Shri Jhunjhunwala and No. 417 of Shri Symnandan Sahaya.

These amendments and the clause are now thrown open for discussion.

Dr. Deshmukh : This is a very important clause and it has assumed greater importance because the provisions of the present law are going to be limited only to those related to marriage and divorce. It was for that reason that I was going to say, so far as clause 3 was concerned, that there was not any very great need for a definition of the words " custom and usage ". Also I thought that so far as marriage and divorce were concerned, there was the prevailing opinion that custom should not be taboo and should not be prevented from

operation to the same extent as might have been the case if we were to include inheritance and succession in the provisions of the Code. So I thought that since we were going to limit this now only to marriage and divorce, insisting on defining custom and usage and also making provisions in clause 4 were not of such great importance. Therefore, I was suggesting that the definition also should be omitted from clause 3, so far as the wording of the definition is concerned. I am in complete agreement with the learned Doctor, because it is absolutely identical with the rulings on the subject and there is not a single word there which can be objected to. In fact, if anything, it liberalises (Shrimati Durgabai in the Chair) and widens the scope, for it extends to anything uniformly observed for a long time and it gives recognition even to family customs. From that point of view there is nothing objectionable about the definition. But so far as most of the provisions in the present Bill are concerned. I would like the Hon. Minister to view the whole thing as early as possible from this point, namely that the provisions are now going to be limited only to marriage and divorce. Now as he had himself admitted, there are many things here in this Bill, many provisions which were intended specifically to govern other provisions in a particular manner, I would like him to view even some of the provisions to which we are going to confine ourselves from this point of view. If he does that I think some modifications would be necessary even in this clause which gives the overriding effect to this law as against custom and usage as well as interpretation of Hindu law prevalent at the moment.

If we pass the clause as suggested by Dr. Ambedkar's amendment we would certainly be going further than what was, I believe, intended. Sub-clause (a) of clause 4 reads:

" Any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code. "

If it is correctly interpreted, it would mean that all custom and usage so far as marriage and divorce are concerned will be barred, because they are matters dealt with in this Code.

Shri J. R. Kapoor: Unless specially saved.

Dr. Deshmukh : I fully agree with the amendment notice of which has been given by my friend Mr. Sahaya. Since you put these words here, so long as you legislate on the subject of marriage and divorce, as far as I can understand, it would not be possible to recognise any custom or usage.

Dr. Ambedkar: We are saving some things.

Dr. Dsehmukh: Not unless the saving is put down.

Dr. Ambedkar: The clause begins with the words " Save as otherwise expressly provided".

Dr. Deshmukh: So far as my view of the matter is concerned, as regards marriage and divorce, custom should have the play. We have the instance of

the Punjab, which is being governed more by custom than by specific legal provisions.

Dr. Ambedkar: We want to raise the people of the Punjab to our standard.

Dr. Deshmukh: From that point of view I have tabled an amendment to omit the words " any custom or usage " so that any custom or usage which does not contravene or which answers the requirements of clause 3 should prevail and continue. If this is not done, I am afraid, any other provisions in the subsequent clauses will not help us. According to my understanding, if part (a) of clause 4 is adopted as it is, even where it is the wish of the House that custom and usage should be recognised side by side with the provisions of the law, it will not be possible to clothe them with that recognition. Therefore it would be best to omit the words " any custom or usage ". Some of my friends have gone to the extent of saying that it should override the provisions of the law everywhere, as has been suggested by Pandit Bhargava. That would probably be something which is absolutely contrary to clause 4. It would be tantamount not only to the omission of the clause but would be putting it in the opposite direction.

Shri J. R. Kapoor: It would be a negation of the Code itself.

Dr. Deshmukh : I agree that it would be a negation of the Code. My submission is that there would be ample room for the continuance of any recognised customs and usages so long as we do not bar them by this enactment. I do not think it would be correct to leave the sub-clause (a) as it is. The original clause was to the effect that any custom or usage or any other law in force immediately before the commencement of the Code shall cease to have effect as respects any of the matters dealt with in this Code. From that we have modified the position slightly, so long as we limit the law only to marriage and divorce. I would like that usage and custom should be allowed to prevail because it has stood the test of time, it is more convenient and less expensive, and it is likely to be less oppressive to the people. I submit there is everything to be said in favour of the amendment I have moved.

Sardar Hukam Singh: I have moved my amendment whose purport is identical with the amendment Dr. Deshmukh has moved. I entirely associate myself with what my learned friend has just now said, but in addition to that I have to submit certain other points. In clause 3 we have just defined custom and usage; how we have exalted it and dignified it is apparent from the words used:

" the expressions ' custom ' and ' usage ' singly any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy " .

I beg to submit that when we have laid down a definition and have restricted what actually a usage or custom is for it to be recognised, immediately after

that we deal a fatal blow to it in clause 4.

An hon. Member: There is saving.

Sardar Hukam Singh: There is saving—everywhere, in every clause you say, save something which is deemed proper. But I look at it the other way. It should not mean that for every clause wherever an exception is deemed necessary a saving clause should be added saying that such-and-such a custom should be saved. Why not save it absolutely when it has the status of law ? It cannot be imagined that it is so vague, so uncertain or so indefinite that you cannot reach at it or find it out. It is not only on the lips or in the hearts of the people in general, but I lay claim to this fact also that it is already laid down in public documents and it cannot be changed arbitrarily. If somebody were to say that it might lead to litigation, then I can lay the counter-charges that even in codified laws there are always disputes, even in registered documents and registered facts there are disputes. I might read from Mayne:

" The *Rivaj-i-Am* is a public record, prepared by a public officer in the discharge of his duties under Government rules. The statements therein may be accepted even if unsupported by instances. Manuals of customary law in accordance with the *Rivaj-i-Am* have been issued by authority for each district."

So, those customs are not carried orally that there can be dispute about them ; they are contained in public documents. At each settlement they are revised and scrutinised to see that everything is correct according to the custom that prevails. There is no danger about it. My fear is that we have been governed so long by a very simple law. We are told that it is now too late in the day that Punjabis should rise up and say that they are not governed by Hindu law. Of course, that is our claim. The Punjab Laws Act, clause 5, does define that we have been governed by customary law in preference to the Hindu law. Everybody knows the customary law and understands it well.

Dr. Ambedkar: This is much simpler than customary law.

Sardar Hukam Singh: We are told in one breath that we have so long been governed by Hindu law—well and good—but in another breath we are told that that was not the proper Hindu law. Hindu law is now rediscovered and a Code is being brought and thrust upon us. The lawgiver says that this is the Hindu law. Where is the guarantee that this discovery might not lead to another after a few years and we may not be confronted with the statement that the law then being propounded was the correct one and everybody else who went before it had made a mistake. If it is progressiveness, we claim that our customs are more progressive than the law which is being proposed now. If progress is to be the criterion, then I say: don't touch us. If you wish to move forward, we are already in advance of you. Come after us. Even in regard to marriage and divorce, we are far in advance of you. Do not pull us back. Laws

should reflect the stage to which the society has advanced and if the law-giver now thinks that we have advanced to this stage only now, then he is mistaken. If it is only for the sake of bringing about uniformity, then too I am afraid he would not succeed. The variations in the customs and usages, in the cultures and languages, cannot be blended together in so short a time.

An appeal was made to the Sikhs yesterday that they should forget the old days and try to become part of the nation. That is a thing that we would cherish. We are not opposed to it. but if Dr. Ambedkar cares to listen to me ...

Sardar B. S. Man (Punjab) : He is talking to somebody, he does not bother to consult us. He does not bother about our opinion.

Sardar Hukam Singh: I find he has turned to me now. We were reminded yesterday and an appeal was addressed to us yesterday that we should try to become part of the nation ; that we should have no tendencies to remain separate. That was very good of him and I thank him wholeheartedly. We are prepared to come forward and meet him more than half way but I would just remind him, as I did yesterday, that he should begin at the Government and at the Cabinet itself, he ought to advise the President that he should not make discriminations when he issues orders, and I particularly referred to the Scheduled Castes Order of 1950.

Dr. Ambedkar : I think my hon. Friend may legitimately criticise the Government, but I think he ought not to bring in the President, because whatever the President does he does on the advice of the Ministry and I would be quite prepared to bear all the criticism that he wishes to direct against me.

Mr. Chairman : I think this point has been made clear on a former occasion when the Deputy Speaker told the House that the President's views are not to be canvassed or criticised on the floor of the House.

Sardar Hukam Singh : Perhaps I have not been heard. I said that Dr. Ambedkar should ' advise ' the President. I think I am within my rights in saying that. I am not criticising the actions of the President. I am only requesting Dr. Ambedkar to advise the President. He has been advised by Dr. Ambedkar and other Ministers, and I am requesting Dr. Ambedkar to advise him. My appeal to Dr. Ambedkar is that he should beg at home.

Sardar B. S. Man: On a point of order, Madam. Some doubt has arisen in my mind. Since the actions of the President are under the advice of the Government, supposing that an action of the President is such that it gives rise to a complaint in the House, particularly at this moment when the Punjab is being governed directly by the President , is it not open to me to question the advisability or validity of certain orders of the President which to my mind are unjust ? In that case it will not be possible for me to question the actions of the President as such.

Dr. Ambedkar : I am quite certain about it. Even if my hon. friend has an occasion to criticise any of the orders that have been issued by the President,

it would not be open to him to criticise the President. He can censure the government if he likes.

Sardar B. S. Man : Even when the orders are issued directly by the President? Of course, the constitutional presumption is there that these orders are issued on the advice of the Cabinet. The situation in the Punjab is that it is governed directly by the President. Of course the responsibility for any orders issued by him would fall on the Cabinet, but when the orders of the President are to be discussed, how can I refer to them except as orders of the President ?

Mr. Chairman: The Constitution very definitely says that everything that the President does shall be on the advice of his Council of Ministers and that explains every act of the President.

Sardar B. S. Man : Suppose I want to refer to the orders made by the President in relation to Punjab, I can only refer to them as the orders of the President, though the presumption remains that they are made by the President on the advice of his Cabinet, I would like to have a clear ruling from you on that point.

Mr. Chairman: I think the point has been made clear already by Dr. Ambedkar and whatever explanation he has given applies to this category of orders as well, to which the Hon. Member has just referred.

There are two positions: one is that the President are not to be criticised, the other is that the President, whatever he does, does it on the advice of his Cabinet. If these two are taken into consideration, the conclusion will be that even though his actions are based on the advice of the Cabinet, yet they are not to be criticised.

Sardar B. S. Man: Even if they are unconstitutional—even if they are bad ? I can always say that this advice which has been tendered to the President is bad advice.

Mr. Chairman : We have accepted the provision in the Constitution that the President's actions are not to be criticised.

Sardar B. S. Man: We can even move a no-confidence motion

Dr. Ambedkar: You can move a no-confidence motion in the Government, not the President.

Shri Damodar Menon (Travancore-Cochin) : Has not this House a right to impeach the President ?

Dr. Ambedkar: That is a separate matter altogether.

Mr. Chairman: I would, in this connection, refer the House to clause (VI) of Rule 159 of our Rules of Procedure which says:
" A member while speaking shall not—,

(vi) use the President's name for the purpose of influencing the debate;"

Sardar B. S. Man: In fact, it is the Government that is using the name of the President. When I criticise certain actions of the President, the odium attached to them may be of the government or the advisers of the President.

It is up to the people to pass it on to wherever it belong. But when the orders issued are of the President, criticism ought to be in the name of the President. Because, at present in the Punjab we are being governed by the President, am I to forego the right of criticism? It may close the door for all future time to come. That is my point.

Mr. Chairman : My own personal feeling is that if Hon. Members are not prevented from criticising, as they are doing it in the House, they may direct their criticism to the government who are giving bad advice—if it is bad advice in their opinion. If the Government is at the bottom of the President's action, if in their opinion it is not the President who is acting but it is the government, which is tendering bad advice, it is absolutely open to the Members to criticise the Government on their actions without bringing the name of the President.

Dr. Deshmukh: Can we also say that we are not criticising the President and that we are criticising the Government?

Mr. Chairman: Therefore, where is the difficulty? When the Members are free to criticise the actions of the Government and there is absolutely no bar to their expressing their views frankly and openly, they need not feel or suffer from the trouble that they are not able to bring in the name of the President directly.

Sardar B. S. Man : We are not bringing the name of the President but the actions of the President, as they are the actions of the Government. It is for you to presume just as it is for me to criticise.

Mr. Chairman : I think I have made the point quite clear. If it is in their mind that it is the Government that is at the bottom of the President's action and that is not advising properly, if the Government is the subject matter of the attack, they are absolutely free to attack the Government. Nothing bars them.

Sardar Hukam Singh : I am sorry that my appeal has been lost in this discussion that took place over the question whether we can criticise the President or not. But my purpose is not to criticise the President at all. He is not to blame so far as my point is concerned. I bring the charge directly against Dr. Ambedkar, because he made an appeal to me and other Sikhs that we should not think in such separatist terms. But the blame lies on the other side. He has started this game and kept us at a distance when he was advising the President to make that order about scheduled castes. That is my complaint. Before he makes an appeal to me that I should change my mind, he should begin from his own sphere and remove that injustice. That was my first point.

1 P.M.

The second point is when we submit that custom in Punjab is much simpler and much more easily understood by the average citizen, we are confronted with this question whether we want monogamy or not. That is not the question. Monogamy we do want. We support and welcome it. Everybody

wants monogamy. Nobody is against it. Already public opinion is so strong that now normally all people are for monogamy. Moreover the economic condition of the country is such that nobody can now bear the burden of more than one wife. There is no denying the fact that it is not possible for an ordinary man now, except those that are placed in a privileged position like our Doctor himself, to have a second wife. Therefore no question arises about monogamy. Even if it comes we are not against monogamy, we welcome it. But the question is that there are other things that will follow. There are prohibited degrees. There are other ceremonies. So far as Punjab is concerned, our prohibited degrees are much fewer. You are contracting it by this Bill and you will have to contract it further. Though we are not passing the portion relating to inheritance at this moment, it is contemplated to pass it in the near future. If you want that the girl should have a share along with her brother, then this long list of prohibited degrees cannot remain. Obviously we would be compelled to contract it more and more unless you give inheritance to our cousins and sisters and others (*Interruption*) like Muslims certainly. Both the things have to go together and already in the Punjab custom, there is a list of prohibited degrees which is recognised and permitted by custom and if you are doing anything against that progress which you claim you are helping to proceed, surely you are bringing us back when we have gone so far forward. (*An Hon. Member : Leading*). Yes. We are leading the whole of India.

(MR. DEPUTY SPEAKER IN THE CHAIR).

So far as the other things are concerned, a short while ago the question arose when my esteemed friend. Pandit Thakur Das Bhargava moved his amendment that along with the adopted son, the appointed heir should be added, and this was opposed on the ground of certain objections and interruptions. The adopted heir is as good as an adopted son as in any other part of India. The only advancement or progress that is there is that no particular ceremonies are observed. The age is not restricted and so far as relationship is concerned, that is not restricted also.

Dr. Ambedkar: Did not we decide that we will take the case of the adopted heir at a later stage ? I thought that the House agreed to that. When we were discussing clause 3 on the definition of son, Pandit Thakur Das Bhargava raised that question and I submitted to the house that this was a matter which may be considered later on at the appropriate stage either when we come to the conclusion

Mr. Deputy Speaker: When we were in the definition.

Dr. Ambedkar: My hon. Friend is referring to the adopted son. We have not come to that yet. I am only saying that we can save the time and get through clause 4.

Mr. Deputy Speaker: We agreed to put it off till Part VII. We can discuss this at a later stage when this matter comes up.

Sardar Hukam Singh : This interruption of the Hon. Minister has created an apprehension in my mind that he is not following or I am not able to make myself clear.

Dr. Ambedkar : I am following and I have caught this point that the whole of Punjab is very progressive as against all others.

Sardar Hukam Singh : That he has caught all right but if I am giving the reasons and instances, he would not care to follow. I am giving an instance where the usage or custom is so necessary and I am saying

Dr. Ambedkar : This part of my education will be better left out now. I will receive it at a later stage.

Babu Ramnarayan Singh: That you will have to learn.

Sardar Hukam Singh : It is not only the doctor himself who is to be educated, but there are others also. If I have to request Hon. Members to give their vote for me, I have to convince them

Dr. Ambedkar: Later on.

Mr. Deputy Speaker: What is now suggested is that this discussion should be blocked. But in another place when the same matter was raised in clause 3 it was suggested with regard to the definition of a son that an adopted heir must also be a son. When we come to clause 7 where the prohibited degrees are narrated, it may be considered whether it should be included, or an explanation added. Let us take up this when we come to clause 7.

Sardar Hukam Singh : I am extremely sorry that I have not been understood. What I wanted to say was this. I am only advocating that usage and custom should continue to override the law. In advocating that I am explaining the utility of usage and custom, the progress that it has made over law and why it should be retained and what differences there are between custom and other laws. In that connection I am referring to the son; I am not trying to define ' son ' or other people. That was my object. But, if the Doctor Saheb says that I should not continue, I will stop.

Dr. Ambedkar : I was only saying that we may discuss this later on.

Mr. Deputy Speaker: We may discuss that later on.

Sardar Hukam Singh: Then, I was submitting. Sir, that so far as custom and usage in the Punjab is concerned, it is recognised and well understood. It has continued to override the Hindu Law as was understood by the common man or even by lawyers and law-givers. There is no reason why, when it has been overriding Hindu Law for such a long time, has stood the test of time, has stood the test of scrutiny of judicial pronouncements and other tests, it should now be abrogated because a new law has been discovered and that is being given by another law-giver it should continue. It has been definite. It is reasonable. It has stood the test of time and has been uniform. As I have already submitted it is contained in public documents and can easily be ascertained. There can be no ambiguity about it. Therefore I submit that these word ' usage or custom ' should be omitted from this clause.

Mr. Deputy Speaker: Pandit Thakur Das Bhargava.

Dr. Ambedkar: If I may plead. Sir, I would like this clause to be put to the House before we disperse, if the House permits.

Some hon. Members : No, no ; this is a very contentious clause.

Mr. Deputy Speaker: I am giving opportunity to the Members who have moved amendments. First Dr. Deshmukh, then Sardar Hukam Singh, and then Pandit Thakur Das Bhargava; there are then Mr. Naziruddin Ahmad and Mr. Jhunjhunwala. I am afraid it will not be possible with the best of intentions.

Some hon. Members: This is a very controversial clause.

Mr. Deputy Speaker: I think we must sit tomorrow. We shall be sitting tomorrow also.

Some hon. Members: Yes, yes.

Some hon. Members: No, no.

Capt. A. P. Singh: Tomorrow we must have a holiday.

Mr. Deputy Speaker: There is so much of work in the Order Paper. We have not even finished clause 4. There are 55 clauses in all, in this chapter. In these circumstances, I am afraid we will have to sit tomorrow.

Capt. A. P. Singh : We have got to study so much about this Bill and about so many other things. We should have some time.

Mr. Deputy Speaker: There are no questions tomorrow. I have no objection to sitting from 9-30. We will sit at 9-30 a.m. This will be the only work tomorrow. **Some hon. Members:** Yes.

An hon. Member: Up to ?

Mr. Deputy Speaker: 1-15 as usual.

An hon. Member: 9-30 to 2 O'clock.

Pandit Maitra (West Bengal) : Up to 12 O'clock, Sir. We have got other work.

Pandit Thakur Das Bhargava : This is the most contentious clause in the whole Bill (*interruptions*). Sir, I was submitting that clause 4 is the most contentious clause in the whole Bill. As a matter of fact while we were considering clause 2 which took so much time of the House, the contentions were really such as appertained to clauses 4. Human nature as we know it, loves its own customs. In societies where the law-making power is not fully evolved the conduct of the people is governed by customs, and custom gets fixed in the affections of the people and its seat is deep in the hearts of people to such an extent that people love it in preference to imposed law. Therefore, the question which is put to us when we go out into the country is " Are our customs to be safe or not ? " a few days ago I was in the house of one of my friends who happens to be a Minister of the Government of India and his orderly asked me. "What are you doing, Sir, with regard to the Hindu Code ?" I told him that the Hindu Code Bill was being discussed and some portions of it will be passed. The very next question that he puts me is, "Will it do away with our divorce custom ? " that was the question that he asked me. I told

him, "Well, it is likely that the divorce provision will be passed and so far as the customs were concerned, those, customs would be recognised only if they stand a special test and all customs would not be continued. He was not happy. He wanted that his own custom whether it be reasonable or not, may be recognised and fully given effect to. Sir, that is really what is in the minds of the people now. All the same, so far as this House is concerned and so far as the representatives of the people are concerned, we are anxious that custom should come into this law only to a certain extent. We want that such customs as have gone very deep in the affections of the people should be continued. So far as South India is concerned we know that there are certain connections and manages there which are regarded as very objectionable in North India, but they are considered right and proper in South India. They should not be interfered with. Similarly, Sir, there are some customs or well-established practices in other parts of India and no person would say that they should be interfered with. In this connection I would illustrate my point by reference to a custom that is very widely prevalent among the agricultural classes in the Punjab and which is going to be disturbed by some of the provisions that we are making here. There a certain kind of marriage is performed called the *Kareva* marriage. If a man dies his widow is married to his younger brother or to any person who is of the same status as a brother even though this brother may be of the same age or younger than the woman. In some sections she is married to the elder brother also, but that is not the practice in other sections. Now, in that form of marriage you do not have the usual marriage procedure, the "*Sapta pada* " and all that. They just go through a customary rite and the marriage is considered as having been performed. The final result of this practice is that neither the property nor the woman goes out of the family and also the children from the previous husband are properly looked after. And this custom has been prevailing among these people from very ancient times. The upper-class Hindus are now adopting gradually this custom of widow-marriage. This sort of widow remarriage which is practised by the agriculturists in the Punjab is being adopted by the upper-class Hindus also. So the custom now is that even if the younger brother of the deceased has a wife living, he will have to marry the widow of his elder brother and they live as husband and wife. This is practically a case of bigamy according to the Hindu Code.

Mr. Deputy Speaker : How ?

Pandit Thakur Das Bhargava: The younger brother may have his wife living and according to custom the widow of the elder brother is married to the younger brother even though he may have a previous wife by marriage. (*Interruptions*).

Mr. Deputy Speaker: There are certain customs prevalent in particular parts which according to them are valid and not unusual. Let us not show any kind of derision or disagreement by any visible representation such as

laughter lest we should wound their feelings. I only put the question for the purpose of knowing the details of it so that the House may understand the position. The hon. Member may continue his speech tomorrow.

The House then adjourned till Half Past Nine of the Clock on Saturday, the 22nd September 1951.

HINDU CODE—*contd.*

Pandit Thakur Das Bhargava : (*English translation of the Hindi speech*).
Sir, an hon. Member has expressed the desire that I should speak in Hindi. In deference to that I wish to express myself through the medium of that language.

As I was submitting yesterday before the House, our customs are of very heterogeneous character. They are so different from one another that a custom considered to be good in one part of the country may be thought of as a very reprehensible one in another. So we should proceed about this Bill very cautiously. Yesterday I mentioned the *Kareva* form of marriage at which some hon. Members had laughed. This custom is prevalent to a great extent in Punjab and Oudh and it is not a matter of laughing. If you judge it from the point of view of high ideals of Hindu society, it is possible that some of the hon. Members may not like the *Kareva* form of marriage because according to the ancient standards the wife of the elder brother is to be treated as mother. According to Ramayana when Lakshmana's mother gave her consent to his going with Rama in his exile, she said:

" Ramam Dasharatham viddhi, mam viddhi Janakatmajam; Ayodhyamatvim viddhi, gachhtat yathasukham. "

She asked Lakshmana to look upon Rama as his father and Sita as herself i.e., like his mother, and think that the jungle was Ayodhya. Such was the high ideal of our society. How many young men are prepared to go in exile at the orders of their fathers? How many men respect an elder brother like a father? Such behaviour is ideal. As far as the customs prevalent in society are concerned, even our Shashtras have ordained that the younger brother of the husband is *Dwivar* the second, prospective husband. In many cases the Shastras have permitted men to marry the wives of their elder brothers, after their (brothers) death. There is nothing surprising in that. I am conversant with the customs prevalent in Madras and other States. I toured the whole of India in the capacity of a member of the Age of Consent Committee and enquired into the various customs. That is why I say that we have a number of customs of different character and I need not dwell over their intricacies. One should not inquire the feelings of a sect, the feelings which form the basis of a particular custom. I want to submit that there is no good reason to laugh at this *Kareva* system of marriage. In fact, many advantages accrue from this system and those communities that have followed this custom for many centuries have benefited from it to a great extent. For example, in old days

and even now in India, when a girl is married in a certain family, she becomes a member of that family, though she is married to one individual. Whatever share of property she gets becomes a part and parcel of that family's property. An effort is made to retain the property and her share in the family, and after her husband's death the responsibility of bringing up her children devolves on the family as a whole. This is the basis of the *Kareva* system. By following this, she by getting married to her husband's younger brother or his cousin continues to be a member of the family even after her husband's death. In this way her children by her first husband are brought up with the same love as before and are not inconvenienced in any way. The hon. Members are aware that such popular customs have been recognised in India. According to Section 2 of the Widow Remarriage Act, 1856, if a widow marries again she loses all her rights in her husband's property. I would invite the attention, specially of Hon. Dr. Ambedkar, to the fact that after remarriage a widow loses all her rights pertaining to maintenance or to her share in her former husband's property. The obvious reason for this is that after remarriage, a widow becomes a member of another family. But by following *Kareva* system i.e. marrying her husband's brother after his death, she retains her share in her former husband's property. This custom is prevalent to a great extent in Jat Sikh communities in the Punjab. When the widow continues to be a member of her husband's family by marrying his younger brother after his death, she does not lose her right over land.

The Minister of Law (Dr. Ambedkar) : Would this not be more relevant when we deal with the clause on marriage ? Now we are dealing in a general way. I have said that whenever each clause comes, to whatever extent it may be necessary that clause may be made subject to custom. I would only suggest to my friend that probably his remarks would be more relevant when we come to that part.

Mr. Deputy Speaker: I have also been thinking of it. The amendments he has tabled seek that only those portions of the Bill must prevail where they are not inconsistent with custom. Then he wants certain customs to be saved. So far as these customs—which will be saved—are concerned, they may be more specifically referred to when we come to the relevant portion on marriage and divorce. With reference to the general question as to whether this should operate where there is inconsistency or whether it should generally operate where it deals with the matter, this is a matter which may be dealt with when we come to details.

Dr. Ambedkar: Would the difference be very great ? supposing we say that any custom which is not inconsistent will be safe or we say " subject ", I think the effect would be the same.

Mr. Deputy Speaker: The hon. Member need not go into the customs *in extenso*. A general indication of the custom is enough. We may dwell on the details when the relevant clause comes up.

Pandit Thakur Das Bhargava: I realize the force of Hon. Dr. Ambedkar's objection.

Dr. Ambedkar : I do not object. All I say is that it will be more relevant in the other context.

Pandit Thakur Das Bhargava : I will not dwell upon the details of any custom. As the Hon. Deputy Speaker said all the four amendments moved by me contradict one another. One of them is that custom should over-ride all laws and even prevail upon the Hindu Code Bill. I gave an example of our customs in order to impress upon this House that if we agree to the principle underlying this amendment, we lose our stand. I do not want that my amendment, saying that custom should override laws, be passed. It should be eliminated. I mentioned *Kareva* system in order to bring out the nature of our customs. Sir, I submit that I do not want that the House should try to keep this custom intact, I shall not press the House for the saving of those customs which I do not consider to be proper.

Mr. Deputy Speaker : Would it not go against the very spirit of the Code ? (The object of this Code is to gather the varied customs and put them into a single Code). Hitherto, customs have not been codified. Some customs have been upheld by the courts and if we go on making exceptions, the whole law will become nebulous. The purpose of the Code itself will be frustrated. I think the Code seeks to incorporate the customs which have been upheld by courts and a presentable document is placed before the country which can be the basis for further additions, if necessary. But it will go against the very grain of this Bill if all the customs are exempted. Only in exceptional cases, special provisions should be made in regard to customs. I am not ruling the hon. Member out of order. Now that we have accepted the principle that we must codify certain matters, it follows that any custom which is inconsistent with this law must go.

Pandit Thakur Das Bhargava : With all respect I beg to submit that I support each and every word of what the Hon. Deputy Speaker has said, because it is right and it tallies with what I mean by my remarks. For many a year, decisions have been made on the customary laws and customs of the Punjab, decisions which are in conformity with justice, equity and good conscience. Thousands of suits have been fought on the issue of our customs. So we should take them as a basis and follow such customs.

Sir, you remarked that if we were to go on making exceptions in the case of every custom we would enter a nebulous state of things and the Code would become useless. I go a step further and submit that we should make exceptions in the case of those prevalent customs only which are considered to be right, such as the *Kareva* system which should be allowed to remain in operation for some time. In Madras and Bombay Acts there is a provision that customary dissolution of marriage would remain operative wherever it is prevalent. Where such customs are provided for, all customs should be either

allowed to remain operative or be done away with. I take codification to be an attempt at improving bad customs. The hon. Dr. Ambedkar dose not agree with me. He wants to codify all customs. I appeal with all sincerity that while codifying we should retain only good things and leave out the bad ones. I am opposed to that kind of codification which would include even bad customs. It is not our intention to perpetuate bad customs through codification. (I want to make it clear from my amendment, that customs should prevail. I have also proposed that universal laws and principles should be given due importance, a scrutiny should be made with the purpose of judging as to what is needed and all advantages and just universal laws, usages and customs should be retained.

If we want to codify our usages and customs, (I would like to point out that the most important of our customs is that we should not allow divorce). But we are going to give our women the liberty of divorce, because the Constitution and the sense of justice do not allow that women should lack this liberty. Go ahead and give them this right but bigamy is an established custom. It has been in vogue for many centuries and it is prevalent in some sections of our society. After the passage of this Bill and the enforcement of monogamy a person would not be able to marry another woman by the *Kareva* system as long as his first wife is alive.

Mr. Deputy Speaker : The only point is this. In so far as the *Kareva* custom is concerned, it allows bigamy in particular circumstances. I think when we come to monogamy we can deal with that. But on general principles, the hon. Member can only say that this Code should be applied to all cases except that he may refer to some cases here and there by way of illustration to show that they may be exempted.

Pandit Thakur Das Bhargava: I have not touched upon any particular custom. I want only to show what is the place of custom in this code. Only to illustrate this, I mentioned the example.

Mr. Deputy Speaker: I think the sponsor of the Bill feels that he has looked into all the customs and he has included all customs that, according to him, must have the sanction of law. Other hon. Members may feel that certain other customs prevail and exception must be made for them in the body of the Bill. If that is so, it should be done at the appropriate stage. At present we are on the general provision which says that any custom that is unwholesome and therefore inconsistent with this Code will go. Should we not make a provision like that saying that in so far as matters regulated by this code are concerned, such a custom shall not prevail and shall not have force ? What is relevant therefore on this clause is the general nature of the custom and a few illustrations here and there. Even if there be a single custom which has to be abrogated by this Bill, such a clause is necessary. We are now going into the root of the matter. As to whether a custom has been enjoying uniformity, continuity or is of ancient nature—those are matters which certainly can be

looked into and if some additions are suggested by hon. Members those can be considered.

Pandit Thakur Das Bhargava : Had we been discussing the whole of the Code this clause would have been absolutely necessary. But we are going to pass only a chapter in which at every step it is provided that custom will prevail in such and such case. That is why I mentioned an example to show that such a custom has been prevailing for many centuries.

Mr. Deputy Speaker: Even if there is a single unwholesome custom relating to marriage and divorce, this clause is necessary. For instance, the sponsor of the Bill feels that whatever might be the exceptions, a maternal uncle marrying his niece, that is a brother marrying his sister's daughter should not be exempted.

Dr. Ambedkar : We shall deal with that matter at the relevant stage.

Mr. Deputy Speaker : Let us assume that the Law Minister feels that such a custom ought not to have the force of law, then we should have a general clause like this here. There are customs even with respect to marriage and divorce which have to be provided against, if they are unwholesome or opposed to public morality, or public interest or public policy. I do not see how you can get out of a general clause like this in some shape or form.

Pandit Thakur Das Bhargava : Sir, if you look into the list you will find that I have not given notice of any amendment with regard to the omission of Clause 4. But I have mentioned it and have given an example in order to know as to what place would we assign to custom in this general clause. I agree with Mr. Mayne when he says that custom is the first rule of decision.

Mr. Deputy Speaker: The arguments are not confined to the restrictions that have to be made so far as clause 4 is concerned.

Pandit Thakur Das Bhargava : I beg to submit with due deference that clauses 3 and 4, where custom is defined, overlap each other. Yesterday, while I was discussing clause 3, Dr. Ambedkar quoted clause 4 in reply. Clauses 3 and 4 are overlapping and the mention of one leads to the mention of the other on account of similarity of context. As *Sutras* and *Smritis* say

" *Vedah vibhinnah smrityo vibhinnah naiko muniryasya vacha pramanam, Dharmasya tatvan nihitam guhayam mahajano yena gatah sa pantha.* "

[*Sruti* says something and *Smriti* another. There is no sage whose word can be taken as final. The secret of Dharma (Duty) is very deep. Follow the path traversed by the great.]

I submit that custom has a special place and personal law has no meaning without custom, as is evident from clause 5 of the Punjab Laws Act, 1872. There are many rulings to the effect that custom has a place in personal law. I think while making personal laws we should assume custom to be there. Sir, in the Punjab, in the last one hundred years, all suits pertaining to agricultural communities have been assumed to be governed by agricultural customs. In a suit between urban parties, it is assumed that it would be governed by

personal law. In fact, according to decisions of the Punjab Chief Court (107 of 1887, 100 of 1906 and several others), it has become a sort of law that there is no general custom except where the parties to a suit belong to the agriculturists communities and even in that case the onus of proof of a certain custom falls on the person who alleges it. Viewing the Hindu Code from this point I am of opinion that there should be no undue interference in any custom. Sir, yesterday I submitted that Hon. Dr. Ambedkar was preparing to adopt the customary basis of divorce as provided in Madras and Bombay Acts. I want to oppose this move. You should not spoil our divorce law by adopting that basis as it is the first time that we are making a divorce law. You are interfering in the social economy of upper class Indians. I am in favour of the divorce law. I have no hesitation in saying that we should have a single divorce law for the whole of the country. (I am with you in your efforts for the unification of the country). I know that in Punjab, to which I belong, and other parts of the country, about which I know something, divorce is so easy that there is a saying—"When the parties agree, they need no decree." I do not want that divorce may be had just for the asking; that will be highly unjust, there is a custom according to which the woman pays up the amount spent by her husband and gets a divorce. I am entirely against this custom, because this seeks to destroy our morality. I am taking up your time to voice my opinion, Hon. Dr. Ambedkar is not listening to me and is busy with his work. You should make a provision for some common and uniform grounds of divorce. Do not allow any custom to interfere in the matter of grounds of divorce or we would be in for a calamity.

I would not countenance the provisions of the Bombay and Madras Acts. I am raising my voice against them not because I am an opponent of the Bombay and Madras Acts for so far as bigamy is concerned, I am as much against it as they are. The amendments of which I have given notice have only one purpose in view, that is, I am not ready to give go-by to the good principles that are contained in our laws relating to marriages. Dr. Ambedkar asked for acceptance of customary basis but every prevailing custom should not be accepted because if that were done, as has been done in this Bill, the whole purpose of the Hindu Code Bill would go to pieces. I want that there should only be one basis for divorce. If the responsibility lies with the husband, he should be required to provide for her expenses till the time of her remarriages. You will find from the Bill that although there is no customary basis for them yet it has been found pertinent to make many rules that are in accordance with the rules prevailing in foreign countries. We have no quarrel with the rules of other countries. But I am against inclusion of every custom for there are unreasonable customs also. While customary basis has been so much command, I find three words—justice, equity and good conscience—absent. The customs that were immoral have been declared void by our High Courts for they were not just. If there are customs under the refuge of which a

divorce is effected under pressure and if it is so proved, the High Courts would declare it as immoral although these customs exist together with others. But, these very things that are not in fact based on justice and morality want to come through the backdoor under clause 4. Effort is being made for admittance of customs that would take out the very life of the Hindu Code. We are in no case going to accept them. We must put an end to these things of course. I have no objection for good and useful customs and those that may be very deep-rooted as, for example, the South Indian custom which you just referred, I have thus no objection to Aliyasanthanam Act which has been incorporated in 24(a). But the customs that have harmful effects should be given no place. The Hindu Law says that customs should be followed. In fact, customs are for Archaic society ; but for the advanced society, that keeps pace with the progress of the world, there are some universal principles which the Legislature embodies in the form of Acts and they should be our basis. This is why I emphasize that customs should not be brought in unnecessarily. That is what my amendment seeks to do. The purpose of my amendment No. 446 is to show at what dangerous spot would we reach if that clause were adopted. Otherwise, I have given notice of that amendment merely for discussion and not for acceptance. The rest of my amendments I have already placed.

Under these circumstances I would emphatically request Dr. Ambedkar and the House that justice should be done and nobody should be put to unnecessary trouble. The Hon. Minister may do whatever he likes on the basis of justice, equity and good conscience— he may leave open as much field as he chooses on that basis. But whatever new legislation is enacted, it should be just. Of course, customs should have their proper place there ; but bad customs going against the fundamental principles should not be countenanced. We want to give customs their due place. We want to respect them so far as they are against those customs that lead us to immorality because such a custom is antagonistic to the Hindu *Shastras* and to our principles. There are, of course, differences on the application of divorce provision but I for one support it for I want justice for women who are meted out gross injustice these days. Poet Tulsidas had said through the mouth of Sitaji:

*Mitam dadati hi pita mitam bhrata mitam sutah,
Amitasya to dataram Bharatram ka no pujiyet.*

It means that the poor woman is economically dependent upon the husband and for that reason she worships him. This is, however, not in the interest of the society and is not in accordance with the principles of justice. Tulsidasji should better not have said that Whatever respect we may show towards Shri Ram Chandraji, or Shri Tulsidasji, I am not prepared to keep the women in bondage any longer). This principle of divorce is based upon one's desire and

upon the sense of equality and justice. I cannot close my eyes to the injustice that is being done to women. It is a daily occurrence now that young men leave their wives. I would ask them where are these sisters to go ? So I believe that divorce is a right provision. People refer to *Satis*. But has a man ever been a *Sata* ? Indeed, the principle of depriving the women of their rights prevailed in a gone-by age all over the world. The Married Women's Property Act was passed in England in 1883.

Shri T. N. Singh (Uttar Pradesh): What is meant by *Sata*?

Pandit Thakur Das Bhargava : Do you not understand even the meaning of *Sata* ? All women know what is *Sati* but no man knows what *Sati* is.

So my submission is that we should not make provisions on the basis of customs—bad customs surely. We should, on the other hand, take courage to abrogate customs—those old customs that have now become out-of-date. The Government should make legislation that should be based upon justice and equality.

Shri Bhatt: Sir, an amendment of mine was left out due to my mistake. If you permit, I may move it now.

Mr. Deputy Speaker: Is it already in the list ? What is the number ?

Shri Bhatt: No. 288 in List No. 5.

Mr. Deputy Speaker: Why was this not moved yesterday ?

Shri Bhatt: I was not present at the right time. When I entered the House, the speech had begun.

Mr. Deputy Speaker: He may move it.

Shri Bhatt: I beg to move.

In the amendment proposed by the hon. Dr. Ambedkar, in the proposed new clause 4,—

(i) in part (a), after " dealt with in this Code " insert " after ten years from the commencement of this Code "; and (ii) after part (b) add the *Explanation* : "*Explanation*.—Notwithstanding anything contained in subsection (a), for a period of ten years from the commencement of this Code, any text, rule or any custom to usage in force, shall have effect.

Babu Ramnarayan Singh (Bihar): (*English translation of the Hindi speech*). Sir, today you have given me quite early the opportunity to speak on this dangerous subject and for this I thank you. Yesterday and the day before I tried to catch your eye several times and important as the subject was, I failed to get an opportunity to speak. May I make an observation in this connection that there is no doubt that you do full justice in your position about which nobody should have any misgiving

Shri Syamnandan Sahaya (Bihar): Nor anybody has.

Babu Ramnarayan Singh : And, indeed, nobody has. But you have to give your rulings with an even hand. Yesterday you were pleased to say that there was some feeling prevalent against you and you wanted that no such feelings be created so that there may be general satisfaction about the working. It is

but meet Sir, that thing should be done judiciously. But if somebody worries with the thought that people should regard him infallible on all occasions, he is likely to commit some mistakes. Therefore, I beg of you to do your part justly as you have been doing so far. You should not labour under the apprehension that people might think that you are not doing things rightly.

Shri Jangde (Madhya Pradesh): Please come to the subject.

Babu Ramnarayan Singh: I should also like to say one thing more. When I stood to speak, you in spite of the fact that no Member had expressed that desire declared that sufficient discussion had taken place on the subject and that the question be now put to decide upon the matter. However, I should draw your attention to the fact that the matter is very important.

Shri Jangde: The hon. Member must now come to the subject.

Mr. Deputy Speaker: What I would say is it must be left to somebody to decide whether the debate has been sufficient or not, and the Chair takes the responsibility. I called upon the Hon. the Law Minister to reply. It is no good referring to all those rulings when it is left to the Speaker to decide. I have now given an opportunity to the hon. Member. That was on the definition clause. This is clause 4. If he wants to say anything let him say now. What is the good of saying: " You did not give me any opportunity then " ? All that is not relevant.

Babu Ramnarayan Singh: Sir, whatever your ruling it is acceptable. But I am not saying anything unreasonable.

Mr. Deputy Speaker : What is the good of wasting time over that matter ?

Babu Ramnarayan Singh : That is not the thing. All the Members here have the right to speak, and the subject in discussion here is such that it should not have been brought up at all. To me indeed any punishment given to the Government, who have brought this measure here, and their supporters in this regard would be reasonable. Sir, you Probably do not know that hundreds of persons are daily arrested here outside and released ten or twenty miles away. It is said to be a secular State. Does a secular State give liberty to do all sorts of unreasonable things under the cover of secularism ? This Parliament is meant to protect the rights of the people and you are its presiding officer. These things must come to your knowledge and you should give due consideration to them. What is it after all that police has been posted all round and none can pass that way ? This is very bad and absolutely unjustifiable.

This Bill abrogates all the previous texts of the Hindu Law and all rules and interpretations given in respect of them. I am not talking of customs. (I am simply speaking of text). Sir, you are a scholar and are very well aware that the *Vedas* of our country came to be revealed at the beginning of the world and the establishment of the social organisation. The rules of conduct and duties of men in our country are determined by the *Vedas*. Today we have

Pandit Nehru's administration whose representative. Dr. Ambedkar wants to abrogate with a single stroke all those rules which have existed since the beginning of the world. I Would say that all the Hon. Members should oppose such a measure. Firstly, the Hindu Code Bill should not pass at all. But if it has to pass, at least this portion of it, clause 4, must not pass in any case. You know. Sir, and Dr. Ambedkar also knows very well, that Buddhism was preached by Lord Buddha to undo the hold of the *Vedas*. But the *Vedic* religion did not perish. Hardly a few years have passed since the advent of Pandit Nehru's rule and Dr. Ambedkar's coming into office and the *Vedic* principles are sought to be repudiated. Do they not think that such laws should not be passed ? Nobody in the country would accept this law.

Shri Syamnandan Sahaya : Babu Ramnarayan Singh is perfectly right.

Babu Ramnarayan Singh : How could they dare to say that things that have been in existence since times immemorial, since the beginning of the earth and the creation of the Sun and the Moon should now no more be followed ? Wherefrom did they get this right ? Buddhism was preached to overthrow the *Vedic* religion. Other religions including Islam also came. All came and fell, but *Vedic* religion is still there and would remain as such. No one can destroy it and it is an improper and absolutely misguided effort that is being made to efface it. It gives me pain that such things are brought in our Parliament. As our friend Thakur Das Bhargava just said religion and the rules of good conduct were determined by *the Veda* and the *Smriti*:

*Veda, Smriti, sadacharah
Atmanstushtireva cha,
Etachchaturvidhah prahus-
Sakshaddharmasya Lakshanam.*

The definition of Religion is four-fold; Veda, Smriti, Sadacharah (good conduct) and Atmatushti (self-satisfaction).

Rules of good conduct were thus fixed in accordance with the *Vedas* . But simply that was not enough. It was also to be seen that what the *Vedas* prescribe, what they command, should also be there in the *shastras*, *Vedas* set down the path of religion and the *Shastras* supplemented them. But that was not the end all. The rules incorporated in the *Vedas* and supported by *Shastras* should be observed in the conduct, manners and actions of the good people. That is what was meant by the rules of good conduct. But nobody was bound as to their observance simply for the reason that they were laid down by the *Vedas* and *Dharma Shastras* and also followed by good people. In the last, he was to see how far his conscience, his knowledge of good and bad, agreed with them. After consideration of all these factors, his duty was to be finally determined.

10-15 A.M.

Not to speak of the *Vedas* , the *Shastras* and good conduct; not even was

the conscience spared ; the Hon. Minister and this Government mean that our conscience be left out and this Bill be passed : and work be done according to it. Just think, what an injustice it means. Need I submit more, you just look up the meaning of the word ' Law ' in the dictionary. What does it mean, after all ? You can look up the word in the dictionary, and some of you must have seen it already. Dr. Ambedkar is a scholar no doubt ; he must have looked it up in the dictionary.

Dr. Ambedkar: No; I don't look it up.

Babu Ramnarayan Singh : But he puts his scholarships aside and is behaving in a strange way. What is Law after all ? Law today means a supremacy, or a predominant society making a regulation with the help of a military or police and thrusting it on the society as a whole. Sir, Law does not mean this. Law, according to the lexicon, means :— " Law is nothing but the will of the people expressed in terms of Law"—which, in other words, means—whatsoever is the will of the society, is placed in the form of a law and is called a law. These people have now gained supremacy : Police and military are at their command, and with the help of police and military and in the name and with the help of party discipline, they may get anything passed.

Shrimati Dixit (Madhya Pradesh): There is no party discipline.

Babu Ramnarayan Singh : There is party discipline and you will pass it.

Shrimati Dixit: No; it is not so.

Babu Ramnarayan Singh: Well, what will come out of ' yes ' and ' no ' ? I know the position.

Sir, I mean to say that a lot of injustice is caused by such a law. It is not in the interests of this country, nor do the people of this country want it, and, therefore, this should not be passed as law. As I told you a number of revolutions took place, great religious revolutions, but the fundamental of the *Vedas* were not changed. With one stroke of pen Dr. Ambedkar now wants the *vedas* an offence, and this Bill should, in no case, be passed. As there are different texts and rules, the interpretations follow them. A number of sages (Rishis) were born in our land. Shri Thakur Das made a mention of them. It has been said:

*Vedah vibhinnah Smritiyo vibhinnah,
Naiko muniryasaya vachah Pramanam,
Dharmasya tatvam nihitam guhyam,
Mahajano, Yena gatah Sa Pantha. "*

Vedas differ and *smritis* also differ. There is no sage whose word can be taken as final. The secret of Dharma is very deep, follow the path traversed by the great.

Which means—One *Veda* gives one dictum, while the other shows a difference of opinion. In *Vedas* there are certain things where people can have doubts. Likewise, there are *smritis* and *Dhannashastras*. All of them are of the same opinion, it cannot be said so. Some *Dharmashastra* gives one

thing, while the other gives something else. There also is difference of opinion—" *Naiko Muniyarasya Vachah Pramanam* " —" There is not a single sage whose word can be taken as final "; No such sage has born, whose dictum could be authoritative and, hence, to be taken as complete truth, and the rest to be discarded. Not even so. But after this those of us who make of a mention of Manu Maharaj—some amongst them say likewise, that Dr. Ambedkar is Manu of the day

Dr. Ambedkar: I have not accepted that title.

Babu Ramnaryan Singh: do not accept, please. They say it wrongly, as you, in fact, do not deserve it: this is not a thing to be accepted. Those who confer this title upon you do it by way of flattery. If you are called ' Manu ', all of us, too, would like to be called so; why you alone.

And whatever were the dictates of Manu, whatever were his orders, were automatically followed by everybody. They were not propagated at the point of sword. Whenever he were to sit to make a law no police and military were kept on guard. I go to the extent and say that we should feel ashamed that when such a subject is being discussed we are encircled and guarded by police and military lest somebody should come and interrupt us. Furthermore, it has been said : " *Dharamsya Tatvam nihitam guhayam* "— The secret of *Dharma* is very deep it is hidden in the caves. Sir, everybody does know that these people must have thought at times that the subject of *Dharma* was so difficult that it could not be understood. Its secret, which is said to be lying in some cave, is very difficult to find out. How beautifully has, therefore, been said: " *Mahajano yena gatah sa panthah* "—" That, indeed, is the path which was followed by great men. " In such circumstances, when *Vedas* say something, *Shastras* uphold something else, conduct rules ordain something else and it may become difficult to make a right choice then what should be done ? It is, therefore, said : " *Mahajano yena gatah Sa panthah* "

—i.e., whatever is done by the great should be followed. Those, who are called great in our country today, are doing and out to do such things as are not acceptable to anybody even today. Who will accept them in the days to come ? I beg to submit that this subject should be considered in a definite light, and in such a way that everybody may get an opportunity to think and have his say.

Sir, about usages and customs they say that custom should not exist. These people are prepared to do away with customs and will surely do away with them. They should know that the Scriptures, *Vedas*, *Puranas* were not introduced at the point of the sword or by any kind of coercion. Those were such regulations as were to be acceptable to any body when formulated. Some give the name ' customs ' ' family-customs ' some name it as ' family conduct ' while others call them ' customs and traditions.

At a certain place in Ramayana it is said:

" *Raghukul riti sada chali ayi,*

Pran jahin par vachan na jayi. "

(Raghu Dynasty has its ever-present custom. Life it will give, but not discard the word.)

It was a trait of the Raghu Family, yes—a tradition, a custom: Life should not be cared for, it should even be sacrificed, but the words given by them should in no case, go futile. What need I say today ? Cheers to the talent of Dr. Ambedkar or the talent of this Government which tells us not to talk of customs and to do away with truth and customs. They say, all the customs and traditions should be done away with. This is just a thing to be understood as to how important the customs were "*Raghukul riti sada chali Ayi, Pran Jahin par Vachan Na Jayi "* Just look to it that the man who seeks to become our Manu today, says that there should not be any custom nor traditions whatsoever; we should do away with all of them.

Shrimati Dixit: But what is happening today ?

Babu Ramnarayan Singh: If your will were to carry the day, the words could happen. Now comes to question of divorce. In our country, there are some five or six such communities which we know are not more than two to four crores in number. For them they are making this laws so that the right of divorce for them may be secured. In the rest 90 per cent of the society, we know that divorce is a thing of daily routine. And, sir, how is this divorce given ? Two, four or five of them sit together, both the contending parties come and they break some stalk of grass ; and their mutual relations are broken— this completed the " divorce ". Not a panny as to be incurred on this, nor any botheration. Our Hon. Dr. Ambedkar is a well wisher of the Untouchables and they too should know that such well-wishers should be shunned. Now all of them will have to go to the district judge for divorce, what a lot of expenditure and botheration will this procedure mean ? Then alone will divorce be granted.

Shri Naziruddin Ahmad (West Bengal) : A decent work for lawyer!

Babu Ramnarayan Singh: Lawyers giving maintenance to lawyers!

Pandit Thakur Das Bhargava : The *Panchayat* is being empowered to register the divorce.

Babu Ramnarayan Singh : Well, even if it is in the hands of the *Ranch*, it is right to some extent, but that too will be a Government Post. I assert that the Bill be scheduled. Let this law go to hell and then you will see how easily the entire system work. We have *panchayats* and *panchas* ; and in our country customs and usages are pliable they will continue to hold good and people would accept them automatically. If any law is formulated or any decision taken, it should be so clear and precise as may be amiably accepted by people, and they may not think of going against it. But the law that is being passed here, is such that people in our country will take pride in breaking it, and will not act upon it. This is nothing but a whim of those who today have gained power. They are obstinacy-ridden and say that the Bill must be passed

somehow. What the country thinks, and what she needs, the Government never worry about it. What is being spent for it here, and what, after all, is its necessity, nobody cares for it : the Government go on spending money lavishly and thus ruin the country; go on passing baseless and futile laws against the will of the public. I insist upon our Rajaji and Dr. Ambedkar that the Bill be withdrawn: the country does not want it, and the good of the country, good of us all, lies in its being withdrawn. This simply astonishes me that such an injustice is being here where personages like Rajaji are present. There can be nothing more shameful and sorrowful than this.

Sir, I do not want to take more time but I want to request you that the subject is so serious that it needs a proper debate; and if any hon. Member wants to speak on it, he should be permitted to do so. This Bill has created a stir in the entire country as also in the City, and hold that the Bill should not be proceeded with. The Government should withdraw it, and if it is not withdrawn, but proceeded with instead discussion in a proper way be conducted and the hon. Members be not stopped from speaking on it. I would request all the hon. Members to understand all the pros and cons and pass it, then. They may also bear in mind that the good of the country and the society be not impaired in any way by this self-willed piece of legislation, and I again submit with respect to all the hon. Members, that this clause at least be omitted.

Shri Sarwate (Madhya Bharat) : I rise to oppose the amendment of Dr. Ambedkar because I consider part (b) of the amendment as unnecessary and superfluous while part (a) is quite undesirable.

Dr. Ambedkar : You may abuse me as much as possible, provided you do not take much time. I am concerned more with the time than with the abuse.

Shri Sarwate: Sir, I am not abusing him. I am only opposing his amendment. If not interrupted, I shall take very little time.

I submit that by virtue of article 254 of the Constitution, all laws made by the State which are repugnant to or are inconsistent with the laws made by Parliament stand *ipso facto*, to that extent, inoperative. The other laws which may possibly be referred to in this connection are laws made before this code by the Centre. In their case the later law will precede the previous law. Therefore, in both the cases, that is, in the case of laws made by the Centre, they would, to that extent, to which they are inconsistent to the code be *ipso facto* inoperative. Therefore, I say part (b) is unnecessary and superfluous. As regards part (a), the effect of this amendment would be that all customs and all texts or rules or interpretation of Hindu law and customs would be made inoperative, subject to the saving clause at the beginning, namely, all such customs as would be saved by being included in any of the later provisions. My submission is that this is entirely undesirable. The Hindu religion has been living and progressing. It has been said that it is dying and decadent. It has been compared to the shameful life of a coward who flies away from the field

of battle. I would only submit that it is often ignored that one who fled from the battle field may return only to vanquish those who erstwhile were the victors. It must be remembered that the Hindus have repelled those who were for a time, and only for a temporary time, able to overcome them. In the last century the Marathas in Maharashtra from where Dr. Ambedkar himself comes, and then the Sikhs in the north were successful in achieving their independence and establishing their kingdoms. But I need not go into past history either ancient or modern. In our own day and before our own eyes, we have seen this accomplished. Have we forgotten that the present Parliament of which Dr. Ambedkar is an illustrious Member is the result of

Dr. Ambedkar: I have no right to be here. I have sneaked in.

Shri Sarwate: I wish he makes no confession of that nature.

This very Parliament is an illustration that the Hindus repelled the foreigners who had dominated over them temporarily. And what was the element or factor which gave this like or this rejuvenating characteristic to the Hindu religion? In my opinion, it is custom and by custom I mean such custom as is defined and accepted by this House in clause 3—custom, which is a rule that is certain and not unreasonable or opposed to public policy. It is said that custom might be of a bad nature and therefore it requires to be mentioned here. But to say so is contradiction in terms: just as contradictory as today *vandhyasut*. For custom is defined here as that which is not opposed to public policy. Therefore, such customs as are opposed to public policy or morality, they will stand, *ipso facto* repealed. Those customs alone will be saved as would be good customs.

The House will realise that the sources of Hindu law have been described as:

Shruti smrutiah sadachar swashya ch priyamatmanah |

First of all the *Srutis* and *Smritis* lay down the fundamental common background. And then *sadachar* and *swashya priyam* provide for variety, that is to say the element which would suit the various regions of the country. It has to be borne in mind that India is a continent in extent and its population is equal almost to the population of the U.S.S.R. in the East and to the U.S.A. in the West put together. So unless there is variety of the law, the law would be absolutely oppressive and it would be difficult to make it suit the various requirements of the different regions.

Now I would refer to another text of Hindu Law—1 mean that law as it prevails at present. Yajnavalkya says:

Yasmina deshe ya acharo vyavahah kulasthitiah | tathaiva paripatyo sau |

That is to say, whatever customs, practices or family usages prevail in the country shall be preserved intact. And the *Vyavastha* or rule in this connection

is stated thus:

Sanskrit Sloka

They are not liable to censure, whose predecessors used to practise these usages. In modern language, it means that the customs are ancient and from time immemorial. And others which are not so would not be observed.

So with this *Vyavastha*, the Hindu religion was vitalising itself and adopting itself to different regions.

Now, I shall take a small illustration and show that if we entirely do away with customs by accepting this amendment what would be its effect. There are many reasons why the amendment should not be so accepted. First of all, I trust even the learned Law Minister is not conversant with all the good usages that are prevalent in this country from Cape Comorin in the south to the Himalayas in the north. Neither are the Members conversant with all of them. And even if they are, they would not be in a position either to convince the learned Doctor or to convince the other Members of the House of the utility or significance of those usages and of the importance in which those usages are held in particular parts of the country. Therefore, I tried in an amendment of mine, which was for a technical reason not accepted or not put forward, to provide a simpler device by which the local Legislature may be able to supplement this law. That, however, has gone. Therefore, I submit that because of ignorance of all the good usages in the country we should not say " save as otherwise provided in the provisions ". The effect of this saving clause will be nil and part (a) of the amendment will do away with all good customs, whether they are repugnant or not to the law.

According to part (b) only those laws which are inconsistent with the present law are only repealed, whereas in the case of customs, whether repugnant or otherwise, they have all been abrogated. This is a very wide provision which should be lost if it is omitted altogether. A custom is governed by all the requisite qualifications mentioned in clause 3, which the house has already passed and laws would be governed by article 254 of the Constitution.

I shall now take one more instance. Marriage is after all a social institution, meant to satisfy a social need. If social circumstances vary to a great extent in various regions of the country, several provisions would have to be made in the law which is to be enacted. In the present Hindu Law this is achieved in two ways. There are firstly various schools of Hindu Law. There was the law of *Dayabhaga* and *Mitakshara*. The common background is the Yajnavalkya's and Manu's *smritis*. The variety was given by *Dayabhaga* and *Mitakshara*. Further there were in various schools which governed different parts. There was the Mithila school, the Banaras school, the Madras school and the Maharashtra school. This was one of the ways in which variety was provided in Hindu society, which I maintain will for that reason never die. Secondly, there was the *achar* and on account of this the Hindu Law and religion have been progressive and satisfying the needs of all, which were this

vitalising factor. It is the variety which, added to the common background, has kept the religion alive throughout the century. Invaders have come and gone, but Hinduism is still progressing.

I shall now take up the question of monogamy. Irrespective of what the law givers lay down, society would adopt monogamy or other systems of marriage according to its needs. Good law givers therefore ought to provide for this varying need. One of the factors which govern the form of institution of marriage is the ratio between the males and females. If there is an equal ratio between the sexes there will be monogamy and society is bound to be happy. But if there is very great disparity between the sexes then society will have to adjust form of marriage accordingly. If females exceed the number of males then bigamy or polygamy would have to be allowed. Otherwise the result would be either adultery or increase in illegitimate children.

Shri Naziurddin Ahmad: Adultery is permitted by this Bill.

Shri Sarwate : I will not take notice of it. There was a common phenomenon which had been observed during the war. When in U.K. the adult male population went to the war fronts there remained behind in the country an excessive number of women and the result was a great increase in the number of illegitimate children, which has now become a very difficult question for solution. This phenomenon has occurred in other countries also. So also if the number of men is much more than the number of women then polyandry would come in, in one form or another. Even in that case the same result would follow. I am in favour of monogamy, both because it is a law of nature and society has enjoined it and it is in accordance with modern trends. In that respect fortunately in India the ratio between the sexes is equal but even here there are certain other factors which have to be taken into consideration. I have some figures about the ratio in the different provinces. These figures show that the ratio in Madras and Bombay is equal.

Dr. Ambedkar: You are pleading for polygamy ?

Shri Sarwate : Let me proceed. In Bengal and some other provinces the males are preponderating and the females are less. So if you provide only one form of marriage for all these provinces it may not do.

Shri Brajeshwar Prasad (Bihar) : Has my hon. friend studied the ratio between the different age groups—the males between the ages of 16 and 35 and the proportion of females between the ages of 16 and 35 ? That will throw light on the question whether there should be monogamy or polygamy.

Dr. Ambedkar: He wants you to study the proportion of the different age groups among the sexes. But why do you not leave the argument to younger people ?

Shri Sarwate : Every body has to do his work. Dr. Ambedkar has to do his work and I am doing mine.

To proceed with my argument, it is irrelevant or unnecessary for developing my argument to show what the proportion of the males to the females in the

different age groups is. I want here to show that in different tracts different conditions prevail and would have to be provided for as has been done in the prevailing Hindu Law through the different schools and through the *achar*. This is a case where it is absolutely necessary that variety must be provided for and it can be done only by allowing customs, customs which are ancient and are governed by public morality.

I conclude with this observation, that this amendment is entirely unnecessary. Sub-clause (a) is undesirable and sub-clause (b) is unnecessary. Therefore, this clause should be entirely dropped and the amendment disallowed.

Dr. C. D. Pande (Uttar Pradesh): I rise to speak in favour of omitting the clause which seeks to abrogate the validity of customary law. I think this clause enlarges the scope of the Hindu Code. Let me go briefly into the genesis of the Hindu Code Bill. What was the necessity of this Bill ? If you know the background you will know how absurd it is to maintain this clause in this Code. The genesis of the Hindu Code Bill is that there was a constant demand, and there was a feeling in the minds of the leaders of the Hindu society, that there must be a law to be in conformity with the civilised concept of human society. There are only two things for which a case has been made out conclusively and we stand for them: one is acceptance of monogamy, imperatively and without exception: the other thing is that those who seek divorce in certain cases of hardship should be able to get it, that there should be no difficulty in that process of separation, annulment or divorce. These are the only two things for which a case has been made out and I do not see if any similar case has been made out for the abrogation of the validity of customary law. Have you ever heard of a single representation or of a single meeting of the people who are governed by customary law, that this law should be changed, that it should be brought in conformity with the strict law of Manu ? Or, have you heard that they are tired of their customary law and they want to come within the orbit of Manu's law ? No : I have not heard of one single representation or of one single meeting, either in the Press or on the platform, demanding that. There has been a constant demand for improvement in the law as far as monogamy goes, and also as far as divorce goes. People say there is a slur on our name in foreign countries. Well, that may be so; for that we have now accepted the principle of monogamy and of divorce. But I do not like that in the garb of making changes in the Hindu law you should introduce things which are absolutely detrimental to the interest of more than 80 per cent of the people of this land. If you analyse the population of this country, how many people, will you find, governed by Manu's law ? Only a handful of Brahmans, Kshatriyas and Vaishyas. But even they are governed by local laws as well and local laws have got an overriding position over Hindu law. Hindu law was originally not a textual law but a customary law and it was codified by Manu, Yajnavalkya and others in course of time.

Difficulty was experienced by the Legislature of India in the course of the last 100 years in these matters, and they made certain laws about specific drawbacks which were thus removed. Now the demand has arisen for change with respect to monogamy and divorce. We concede it, but how do you presume that there is a desire for change so far as customary law is concerned? What is customary law? It is a natural law, it is a dynamic law, it is a growing law, it has got the force of the needs of the time; if you do not allow that growth, that dynamic character in the society you will become rigid, you will be doing harm to the Hindu society just as Manu's law has done harm, according to you in the course of the last 3,000 years. Do you want that this should be perpetrated in the vast sections of the society which is not governed by that law? This House stands for the principles of monogamy and divorce. Now in the progressive age you want to create hardships in the matter of those very things in respect of which you want to give facilities? It is absolutely inconceivable to me that you desire to do so. It will be a retrograde step.

11 A.M.

There is another reason for customary law being maintained. It will be impossible for the State to maintain adequate number of judicial officers and magistrates to deal with cases of divorce or judicial separation. (*An hon. Member* : Government have enough money.) They do not have enough money even to maintain magistrates to try ordinary cases, which are pending for several months together. You have no idea as to how many more magistrates will be needed. Even if you have money and you are bent upon doing it, do you know the hardship involved? The cost may be ignored, but the hardship cannot be ignored, because in this country unfortunately whenever a citizen comes into contact with Government machinery he is subjected to vexations at every step. I myself have been a functionary of the Government and I have a clear idea of these things. I had some influence, but if I were an ordinary non-official and I went to a court of law, I know how much attention I would receive. An ordinary citizen finds it difficult even to get a ration card. Do you think it will be easy to get a divorce certificate in a court of law for a person who is ignorant and poor?

Pandit M. B. Bhargava (Ajmer) : Courts will be more efficient hereafter.

Dr. C. D. Pande: Things should be accepted as they are. You cannot expect to improve things all of a sudden. There is no justification for creating hardships. Why do you want to abrogate the customary law? Have you received any representation for the abrogation of customary law? Why do you insist on it? Why do you insist on creating difficulties?

Shri A. C. Shukla (Madhya Pradesh) : Because it is against public morality.

Dr. C. D. Pande : Let not morality be governed by law? If you have any illusion that you can govern people's morality by law, you are mistaken.

Shri Lakshmanan (Tranvancore-Cochin) : He is not addressing the Chair. He is addressing individual Members as ' you '.

Dr. C. D. Pande: I am sorry. It is a manner of address to say ' you '. ' You ' does not mean an individual Member. It means the Legislators here.

Mr. Deputy Speaker: No interruptions please.

Dr. C. D. Pande: I do not mind the interruptions, because the case that I am putting before you is sustained by the will of the people outside. I know the people. I know their difficulties. I know the prevalence of the customs. The difficulties that will be created will be enormous. You have not got the machinery to deal with the cases. The cases may be in far off places where there will be no Government machinery. People manage their affairs in an automatic manner. There is an automatic adjustment in social affairs. That automatic adjustment of the society will be disturbed. You wish to take upon yourself a responsibility for which you are not prepared. Moreover it is uncalled for. There is no justification for it. No case has been made out for the abrogation of customary law. A case has been made out for making divorce easier, not for restricting the scope of divorce. Why do you want to enact legislation which is not in consonance with the likings of the people and which goes against the very spirit of this Code ? This Code seeks to confer divorce and you want to restrict divorce. If this contention has any validity, then I submit the Law Minister will consider the matter carefully and sympathetically.

Shri Oraon : (*English translation of the Hindi speech*) Sir, I had not to speak much about this Hindu Code Bill; but we are now confronted with a situation which compels me to speak something. I mean to say that Scheduled Tribes and Aboriginals are neither Hindu nor Muslim nor Christian. They are without any religion. First they were not included in this Bill nor did they want themselves to be dragged into it. But now I find that we too are being dragged into this Bill. I want to say that the divorces which take place amidst our Community, perhaps do not take place in any part of the world. We know that not less than 80 or 85 per cent divorces take place before any child is born as a result of the marriage. If some action is to be taken there or a divorce is to take place, we shall be handicapped in getting the case recorded with a *Panch*. It is said that the case will have to be recorded in our own *Panchayats*. The *Mukhia* of that place will go to the court and apply. If either of the two—man or woman, who come for divorce, do not agree to his decision, the case will proceed further and move to the court. We know how many divorces take place. Not even in 18 months will the cases registered in only twelve months be decided. Dragging us into the Hindu Code Bill, therefore, is not only injustice but our virtual death. I would request the learned doctor, therefore, to exclude us from it.

Next, whatever we see in the Hindu Code Bill, is both good and bad. May be, people living in the cities may not know this, but we are villagers and come across people of all types. All of them are against it. In this state of

affairs we see that on the part of the members of the Parliament, the representatives of people as they are, this will not be a right course of action nor will it be right on the part of the Government to pass this Bill. It is, therefore, I must say that this Bill should not be passed unless new elections are held.

Shri Jangde : (*English translation of the Hindi speech*). Sir, I have been listening to the speeches of the Hon. Members for the last four or five days. From their speeches it appears to me that clauses are not being considered, but that general discussion has started.

I wish to recount the objections raised by the hon. Members against this Marriage and Divorce Bill and I consider it my duty to reply to them.

Just now Shri C. D. Pande said that a loose custom of marriage and divorce prevalent among 90 per cent of the people should be left intact. He also asked why should the *Dwij* communities, among which this divorce custom does not obtain, be compelled to adopt it.

Pandit M. B. Bhargava: He did not say this.

Shri Syamnandan Sahaya : This was not said. Why are you unjust to him?

Shri Jangde : He said that this matrimonial code, which is going to be passed, would greatly lengthen the procedure of marriage etc. and would create many difficulties for the village people.

Babu Ramnarayan Singh: He came only to give a sermon to us. He did not speak; on any clause in particular.

Babu Ramnarayan Singh: You deserve it.

Shri Jangde: I have been doing work of social reform among these 90 per cent of the people and I know them thoroughly. I know their marriage and divorce customs very well. The people who are speaking on their behalf do not know them. They speak only to place obstructions in the progress of this Bill. It has been said that easy divorce is a very good thing. I want to tell you sir, that the custom of divorce among the *Shudras* has become so old and useless that it is being highly misused. Today the honour of our mothers and sisters is at stake on account of this. They are sold in Calcutta and Bombay and they embrace other faiths. Today among the *Shudras* a woman does not enjoy even as much respect as a cow does. A cow is sold only once, but women are sold many times. The custom now prevailing among them has become the custom of the high-handed and is no longer the custom of the poor. You say that if this custom is abolished, people will have to incur much expenditure in the Law Court, but I cannot help praising the wisdom of Dr. Ambedkar who has suggested the remedy that the decisions of the *Panch* of the caste shall not be binding until the sanction of the Government is obtained. Today what we do is to marry, perform the custom of *Saptapadi*, and to sell her (the wife) after two or three days. People become ready to sell and divorce her. In this case, what is the meaning of sacramental marriage and *Saptapadi* ? The old customs have become rotten. You want to maintain

them. You want to keep them in the name of Hindu religion. But I want to tell you that 90 percent people of Hindu society are becoming opposed to them. Women are not shown any respect. They are labouring under difficulties. You say that we regard them as *Devis* and *Saubhagya Lakshmi*, but this is all wrongly put by you.

Just now some hon. Members said that they did not want divorce for the *Dwijas* and why should they be compelled to adopt it. This is the opinion of many of the hon. Members. You want to place the lion and the cow in the same category. Should the hunter and his prey be placed together? Do you want to unite the East and the West? They can never meet. On the one hand you say that there should be no divorce among the *Dwijas*, on the other, you say that loose divorce should be maintained among the *Shudras*. This anomaly is leading to a fall in our moral and human standards. The Hindu Code has been drafted to remove this extreme kind of discrimination and to bring the *Dwijas* and *Shudras* from Cape Comorin right upto Kashmir together. You want to spread the awakening among the Hindus. I say that the Hindu Code Bill would be a great help in this direction. You do not want to show the same sense of moral values which has been shown by Dr. Ambedkar in drafting this Bill. In this connection I wish to say that if there can be any means of bringing the *Dwijas* and the *Shudras* together, it can only be the Hindu Code Bill. You say that it should be applied only to those who want it, and those who do not want it should not be compelled to adopt it and none should be forced to adopt monogamy and divorce. In my opinion propaganda has been done in the wrong manner in this connection. Government have no money and they do not want to do propaganda in this respect. Not the supporters, but the opponents of the Hindu Code are doing forceful propaganda. Once I heard that Karpatriji said in a speech that it could even make marriage between father and daughter possible. Similarly other false propaganda is being done. It is said that it would lead to marriages between brothers and sisters and the Hindu religion is going to pieces. I say that the diseases which have crept into Hindu religion are being sought to be removed by treatment. This is the aim of the Hindu Code. Such a propaganda is being done in this connection. You say that you do not want divorce, but on the other hand, you want that it should be introduced for us. Among the *Dwijas* a married woman who becomes a widow, cannot be re-married in any case but men can marry a hundred times if they like. This is no justice. Just as Rama married once

Mr. Deputy Speaker: You leave Rama aside.

Shri Bhatt: He should be allowed.

Shri Jangde : I was speaking of the evil custom prevailing among the *Shudras*. We want to change it. Every person can marry five or six women. In no home are women married according to *Saptapadi* are found. They go away with the high-handed persons. By changing their women repeatedly

they incur much expenditure. More than half of their property is spent in marrying these women. Is it justice that a woman married to a man should go to another ? This Bill in which you see the end of the Hindu religion has been introduced to remove these evils. Therefore, without taking more time I would like to submit that if you want to see the renaissance of the Hindu religion, if you want to maintain it and bring the *Dwijas* and the *Shudras* together, the amendment in respect of Marriage and Divorce clauses of the Hindu Code Bill should be accepted.

Shri T. N. Singh : (*English translation of the Hindi speech*). Sir, I am deliberately speaking in Hindi, because some of the hon. Members and particularly shri Oraon, by speaking on the Hindu Code Bill in Hindi, have in a way asked us to do the same. We have one thing specially in mind while discussing this particular clause 4. Dr. Ambedkar has certainly tried to take a place in the galaxy of Manu. Parasher and Yajnavalkya by following in their footsteps, but I believe that it is an unjustified effort on his part because our traditions have gradually evolved according to the dictates of time and circumstances. They are formed on the basis of collective wisdom and experience. Therefore, the wisdom of any particular individual cannot affect them. What I mean to say is that we cannot violate our traditions so simply and so easily. We perhaps do not even know all of these traditions. I would challenge Dr. Ambedkar, our Minister of Law, to state how many traditions of ours, which he wants to destroy completely through this Hindu Code, are there in this vast country of ours, in the Bharatvarsh. How far is it proper for him to say that these traditions which he perhaps does not know of should be completely destroyed ? Therefore, you can make efforts to follow Parashar or Yajnavalkya or any other lawgiver (*Smritikar*) but, for god's sake, do not make this wanton assault on these traditions.

Sir, I would like to tell you that a good many traditions are being followed by innumerable people in every corner of our country. They are perhaps being followed on a higher level of morality than what was obtained by Manu, Parashar or any other *Smritikar*. Can anybody today say that in that section of our country to which our Shri Theble Oraon has the Honour of belonging, many things, many traditions, many laws are not such as are highly superior to our laws ? In my view this divorce (perhaps there is no one word of it in Hindi). (*An hon. Member : Vivah-Vichheda.*) You may say *Vivah vichheda*, but it is not one word anyway, the rules in force there in this regard are far superior to the rules in our Code or rules found anywhere, in England, in America or elsewhere. In our opinion it is not proper to curtail them or to boast that this Code or this measure is better and should replace them. Therefore I would appeal to our Government, to our Hon. Minister of Law that it is improper for us, being ignorant of the traditions, to deal with all these traditions in this manner. Secondly, it is not wise to destroy completely these traditions and specially when they do not go against any rule or Bill. I have

heard that in some cases in some parts, these customs and traditions are being given their due place. But no amendments have come before us in regard to them.

An Hon. Member : Amendments regarding marriage have come.

Shri T. N. Singh: But amendments regarding other things have not come, perhaps they are about to come. I welcome them. But at the same time I would submit that it is not correct to make laws for them in a sweeping manner with a view to eradicate them. That is why I oppose this measure particularly. If you were to read this clause, it will be found that the words ' any other laws in force ' have been added to the clause now framed i.e. any other law or Act which is inconsistent with it would also be repealed and would not be applicable. In that case, would it not be proper if you also said in regard to these traditions that the inconsistent things would not be applied and any custom or tradition going against any of its principles or basic aims would not be applicable. If so, it would have been understandable. But to say that no tradition would apply is not fair and I believe that it is essential to change or amend it carefully. I do agree that many of our traditions are inconsistent and are perhaps not according to the times. According to some of the current traditions, an aged man of 60 or 70 can also marry. But it is regretted that this is not incongruous with the Hindu Code. What I mean to say is that if you have to axe any tradition, axe such traditions.

Shri A. C. Shukla: Those regarding dowry.

Shri T. N. Singh: Yes, there are many others, like widow remarriage etc. You made scores of laws regarding them and did many things, but did we succeed through them ? That is why I say that every tradition should be thoroughly studied. I am opposed to removing all of them. I do not mean that none of our traditions is wrong.

Shri A. C. Shukla : May I ask a question ? How will you determine that a particular tradition is good or bad ? If 75 percent people of a community want a custom to be retained, should their view be accepted, and should the customary law, as stated by Shri Jangde, be reformed ? Everybody wants reform of the bad customs. Therefore, let us know how it should be determined.

Shri T. N. Singh : The question put by Shri Shukla is very simple. It is not you or I who reform the traditions. It is done by the whole society, the whole community, according to the dictates of the time and it can never be said that all traditions have remained unchanged. All of them have undergone changes. But I say that when we apply our individual judgment as against our collective wisdom, it becomes our duty to study them fully. That is all I have to say. I do not say that no customs should be changed, but we should change them with our collective wisdom. We have the right to do so in this manner, but we should not do it through legislation. This is what I want to say.

Shri A. C. Shukla: How ?

Shri T. N. Singh: Many of the traditions which you regard as bad get changed by the pressure of public opinion. Many others change according to the dictates of time. It is said that at one time when a child was born in Sparta, it was thrown away. If it could survive one day and one night, it was brought back and given a lease of life. This is correct. There was a special necessity for that tradition at that time. These traditions change with the times as the needs of society change.

Dr. Ambedkar: You are arguing a bad case.

Shri T. N. Singh : I do not understand this. When I believe that you are making a vain effort, you might think that I am supporting a bad case. The thing is that you do not have full knowledge of our traditions. Only after studying them completely you might change them and those traditions which are very good, whether they are sustained by this Code or not should.....

Shri A. C. Shukla: Are they recorded ?

Shri T. N. Singh : We live in this country and know them. It is, therefore, improper to axe these good traditions and I would like that either this clause should be removed altogether or it should be adjusted in the next clause. It should be considered after that. that would be proper. To pass it just now in this form is not proper.

Ch. Ranbir Singh (Punjab): *(English translation of the Hindi speech)* I have risen to support amendments No. 420 proposed by Pandit Thakur Das Bhargava and No. 288 of Shri Bhatt. Shri Bhatt by his amendment means that if some customs or usages clash with the Hindu code Bill, then that clash should not be regarded in the light that the custom is abolished, but it should be allowed to continue for ten years and after that period it should be regarded as finished. Amendment No. 420 by Pandit Thakur Das Bhargava means that those customs which are in accordance with the Hindu Code Bill should be regarded as abolished ; and those customs which are left, their power or their legality should be retained. Whatever has been said by my learned friend Shri Pande, I agree to that and this thing is right and very much heartening. The real purpose of the Hindu Code Bill was considered to be that this Bill was being brought forward to introduce some reforms in the country to remove the prevailing social evils from the society and to bring about some changes in it. How many people would be affected by it has to be taken into consideration and as he said I regard the imposition of this Hindu Code Bill from the backdoor upon those people of this country who were free from it up till now, as an act of abuse of power.

Shri A. C. Shukla : Even if they do not want it they must have it.

Ch. Ranbir Singh : Shri Shukla has not understood the meaning of the word imposition used by me, or he has not heard it properly. If he says that the imposition which I have said is wrong then perhaps I would like to know from him whether he can quote any example in which any person from the Punjab, may he be a Hindu or a Sikh or a Muslim, has ever raised his voice

that their customary law should be abolished and in place of that they should have the law of Manu, or of Yajnavalkya or of anybody else.

Shri A. C. Shukla : When they will become educated they would demand that.

Ch. Ranbir Singh: Perhaps Shri Shukla does not know how dynamic personalities have born in our Punjab who have challenged the authorities of our country, although, I do not support them but this is an historical fact that during the recent years nobody had been able to defeat a Congress candidate in the Hindu majority areas, but in the Punjab there was a constituency in Haryana, which is a Hindu majority area, in which Ch. Chottu Ram had defeated a Congress candidate.

Dr. Ambedkar: Ch. Chottu Ram was a great friend of Hindus.

Ch. Ranbir Singh : In case the Hon. Dr. Ambedkar has got any document or any other proof about it, I am ready to accept that. But as far as his objective is concerned I am not opposed to that. I am a supporter of monogamy and I want that in some special circumstances arrangement for divorce should also be made so that when some difficulty is felt on both sides, by the man as well as by the woman in living together, a way must be found out to save them from that difficulty. But along with it I cannot help saying that this attempt is nothing but an act of abuse of power, because we should have applied this Hindu Code Bill to those only who wanted to be governed by it.

Since this question of Hindu Code Bill has come before this House, it has taken several months and many a day has been spent upon it, I tried hard to snatch some minutes so that I might express my views about it, but unfortunately I could not get a chance. Unfortunately, when Sardar Man spoke about it, instead of coming to the right thing he got himself entangled in the labyrinth of the Sikh religion, perhaps he might have thought that in this way his point would be more forceful or there might have been some other reason. However, I think that this question is not related so Sikhism alone, this is a question pertaining to the customary laws of the whole of the Punjab. I want to bring to the notice of the Hon. Dr. Ambedkar that even in such a time when such Brahmanic rules and regulations with regard to the living customs of the country and the society were being enforced rigidly, *viz.*, one could not go in a particular direction on Mondays or on Tuesdays or on Saturdays, the martial race of the Jats in the Punjab, to which I and the Hon. Sardar Baldev Singh belong, did not yield to the Brahmanic rules and it has not done so even now. I want to submit that really in our society there is no likelihood of any appreciable opposition to the two provisions relating to monogamy and divorce, and I am not personally against them, but I am opposed to the method and manner which you are resorting to. And the manner or the backdoor method through which it has developed is not a proper one. This is not because I regard myself a Non-Hindu but I do feel that we have never been governed by the Hindu code and it has never been enforced with regard

to us. I doubt your intentions that you can govern by the backdoor policy those whom you could not enslave mentally. I disagree with you to a great extent with regard to the rules and regulations which you are enacting in respect of marriage and divorce without caring for the prevailing customs. I want to state with respect to this that many reformers of society have done a great many reforms in the Hindu Society with regard to the widow's plight but I want to point out that a young widow has remained an unknown thing to our society from times immemorial. Our society does not know the name of a young widow, because it is a custom in our community that when the husband of a woman dies, then after a year of his death the brothers and parents of the widow and the relations of her late husband meet together and in spite of the shyness, as is common everywhere in our Hindu society, and against her formal wish, that she would herself bear the distress that has befallen her, and in spite of her refusal, she is told that this is not possible. It may be said that her ideal is good, but how many people are there who can follow such a high ideal ? The people of our society doubt whether such a lofty ideal which you are going to establish in our society would not create any evil in our society. Therefore, you should recognise our simple custom of remarriage and not invalidate it. So I wanted to support the proposition laid down by Shri Bhatt. Now I mention the reasons for that.

On the one hand where your rules and regulations wanted to reduce the troubles of our womenfolk, and they have reduced them to a great extent, on the other hand their troubles have been increased manifold. And that is because you have given them a sort of right to marry wherever they want. In the ordinary way, if no extraordinary trouble arises it would easily become a custom that they could remarry, but why do you lay down this restriction ? Generally people are not bigamous of their own will but they are forced by circumstances. If a brother dies, his brother has to concede to the custom of bigamy against his wishes.

Shrimati Dixit : I want to ask you a question. There is a woman, who has got four or six children, there is her husband's brother's wife, she also has got four or six children. If they are made to live together would not the co-wifely feeling create trouble between them? Is it not unjustifiable on principle to force a woman to marry another man against her wishes ?

Sardar Hukam Singh (Punjab): By the will of god.

Ch. Ranbir Singh : If you mean remarriage by that, I would say no: remarriage is possible only when it is regularly sanctioned by society, but there are many women who cannot express their desire. After thirteen or fourteen days of his wife's death a man may express it, but the women cannot do so due to the peculiar set-up of our society such a thing is impossible, and ample time is required to change that.

But if she meant this that if there is a brother, who has got two or three children and a wife and he has a brother who is about to die, and he also has

got two or three children and his wife, that they are made to live together it would create difficulties and trouble would arise. If she wants to know about that, I am coming to that point also. I confess it and everybody in our society would confess it that nobody resorts to bigamy willingly and that the woman is also helpless, because she loves her children and she cannot leave the two or three orphans, for where could they find shelter. She cannot say that she wants to remarry and the other members of the household also cannot leave the children, then the question arises whether she should take her children with her. But this is a custom in our society and I think, you may enact any law but you cannot change it. This is not a matter of joke. They themselves could change it but you cannot change it today.

There is another custom in our society. It is their belief that even the most foolish man belonging to a particular family would not allow his children to go to another family and if a man tries to do so very severe punishment has been prescribed for him in our community. Even if you say that our community is backward and it is very difficult to improve it, the result of such an action among us is still murder. If you want that the number of murders and assassinations should increase in our society, the Punjab is already notorious for murders and assassinations, for many people are hanged there for such murders etc.—if you want to increase their number you are at liberty to impose any rules and regulations on them immediately. But if you want to decrease the number of murders and assassinations and the sentences of death, I would request you to accept the amendment of Shri Bhatt or of Shri Bhargava.

So I was saying that either a woman, if she loves her children, will be forced to live as a widow for the rest of her life, as has never been done in her community before, or, if she does not love her children, she might take them stealthily to some other place at night and if she meets some daring person who says that he would see how others could harm him the result would be that either she would become a widow again or her husband would be hanged. But, in any case, she would not remain a fortunate wife, though this is a big and a terrifying thing, but it is a fact.

Then there is the question of *sagotra* marriage. How many men and women live in the cities ? I want to state my own reactions about this Hindu Code Bill. In this house the majority of members come from the urban areas. Those who were born and brought up in the cities confine their thoughts to the rules and regulations and manners and customs of the cities. They think there is a vast difference between town life and village life, they have got no experience about it. I give a simple example. For instance, take the case of a city. If a woman there does not want to marry nobody would object. But if in a village a girl attains about the sixteen of age, not any does distress befall her parent but that girl is persecuted too. Everybody comes to the father and says. " why do you not arrange for the marriage of your girl ? " The girl might be bitterly

opposed to marriage but she cannot avoid marriage. She is forced to do so ; this theory might be good or bad but this is a fact. From this very example you can differentiate between the mode of life in a town and that of a village and see how much difference is there between them; and still you want to enact a common law for both. My friend Shir Jangde spoke so forcefully. He spoke for others but I suspect Shri Jangde has become a townsman or has gone to their side. He is coming to appreciate the urban way of life. He wants to tell his own tale and not that of the people of his own place. So I was submitting that when there is so much difference between the two modes of life, there is such a vast difference between their social conditions, and you want to enact a law which will be applicable to all irrespective of their customs and usages, it would be a great injustice to them.

There is another point I would like to touch upon in this connection and that is with regard to *sagotra* marriage. Unlike the customs obtaining among us in Punjab, here we find that most of the girls are usually married locally. Taking the case of Delhi itself, it will be seen that girls from one part of the city are married in the other part of the city. Even in the small towns having a population of say ten thousand they are married likewise. Under the circumstances, they are not conversant with the customs regarding marriage prevailing among us. In keeping with the custom obtaining among us, I cannot get my son married among my own sub caste which is spread over as many as 24 villages situated within a radius of no less than ten miles. It is not that he cannot be married in only those 24 villages, even the villages numbering about 30 to 40 where the families of his mother's sub caste are settled are ruled out for the purpose of such matrimony. Things do not end here. I cannot get my son married to a girl from any of the thirty to forty villages, where people of my mother's sub caste live. That is to say, I cannot find a bride for my son from amongst a hundred neighbouring villages or so.

Shri A. C. Shukla: Is it a healthy practice or otherwise ?

Ch. Ranbir Singh : I never laid any claim to this effect. It is none of my intention to annoy him in the way the Hon. Doctor did. Unlike him I cannot dare utter anything unpleasant things. In contrast with the big personality of the Hon. Dr. Ambedkar I am but a humble Member.

Shri Radhelal Vyas (Madhya Bharat): But you are also Jat.

Ch. Ranbir Singh : Of course, I am but not a Sikh Jat like Sardar Bhopinder Singh Man. I do not want to enter into any controversy— and thereby cause offence to 'any one—as to whether our custom is better or other's or whether or not this measure is of any use. What I want is simply to apprise you of our customs which ; for instance, prevent me from getting my son married in about as many as one hundred to one hundred twenty villages. How under such a state of affairs, can those women residing in small towns or even in big cities, be supposed to have any real estimate of the extent of hardships and difficulties which we are subjected to while facing such issues, because

for them marriage is no more than a mere routine affair that could be performed from one *mohalla* to the other?

Pandit Thakur Das Bhargava: There is no difference between Hindu Law and your law in so far as this matter is concerned.

Ch. Ranbir Singh : There may not be any difference in the laws but the developments do vary. According to our customs we cannot establish matrimonial connections among some certain *gotras*. None can dare go against such a custom. Even the most backward person— under the present social structure such a man is bound to be treated as such, although in future he may be called progressive—cannot possibly take such a step. In fact none has got so much courage, so to say. But what you are doing today is, if I may say so, simply enabling such a man, by law, to take such a step.

Shri A. C. Shukla: What is it that the hon. Member wants ?

Ch. Ranbir Singh : I am not going to say what I want. I would, on the other hand, only want to apprise the House of the various customs prevailing. That is why I am pleading for Shri Bhatt's amendment to be accepted. Let developments be closely watched during the next ten years, the truth will express itself in the right manner. If our course of action would be correct you would, I am sure, change over to our side or, otherwise, we would do the same thing.

So I was referring to the fact that even in the present days *sagotra* marriages are not being performed. But there is no denying the fact that rules and regulations have great force on their back. Supposing a man with the help of this law seeks to get married in the same village or among the same *gotra*, what would be the possible consequences ? He is likely to meet the same fate as I have described earlier. It is not that I want to exaggerate things in any way, but, all the same, let me point out what I consider to be a serious drawback in our present day society. Supposing any member of my family gets married in such a manner, nobody would care to ascertain my view in the matter. If my brother commits any wrong of this type, it may be that I may also be murdered simply because I happen to be his brother, regardless of the fact whether my views are in his favour or otherwise. None is going to ask me to explain my view point. Such is the sorry state of affairs in our community. Indeed how strange it looks that they judge the doings of one brother from those of the others ! Here, in your society, three brothers can hold three different views— one can be a Communist, the second a Socialist and the third Congressite. To be more precise, if a man here is a member of the Bharatiya Jan Sangh, it is open to his brother to join any other party, But things at our end are quite the reverse. If any one member of a certain family there joins Congress, the entire family would be automatically deemed to be Congressite regardless of the fact whether it be so or not. Such is the condition of our community. Now, it is for you to call it whatever you like— progress or otherwise. I, for one, under such circumstances, stand for

monogamy in our society. In a country like ours; especially in a community which I belong to namely Jats, monogamy is particularly essential, for among us the number of boys is more than girls. A man have two wives only by encroaching upon the share of any one of his fellow beings. Under the practice of monogamy, comparatively larger number of men would be provided with wives which is otherwise not possible. It is just possible there may be such regions in this country where the number of women is more than men. (*English translation concluded*).

Sardar B. S. Man (Punjab): In Madras they have.

Ch. Ranbir Singh : But the difficulty is that a Hindu Jat of our side is not so broad-minded as to go as far as Madras; a Sikh Jat may go. I for one consider monogamy to be a step in the right direction ; but the difficulty is that our society has not yet so advanced, or shall I say, degenerated, so as to agree to the practice of *sagotra* marriage. Let it be postponed for ten years, after that this issue may. be taken afresh for consideration, if by that time the society succeeds in reaching that height of advancement, which would clear the field for such steps, we would accept it ; otherwise it would keep on pending. We do not, of course, approve of the practice of what we call forced bigamy, but, all the same, the practice continues in our society, though it is not so common. Give us ten years' time during which we may make efforts to do away with such a practice.

In the end once again I take this opportunity to submit to the Hon. Dr. Ambedkar that although, I am a whole-hearted supporter of this measure. I would like him to accept either Shri Bhatt's amendment or amendment No. 420 moved by Shri Bhargava.

Shri Sivan Pillay (Travancore-Cochin): Sir, let the question be now put.

Captain A. P. Singh (Vindhya Pradesh) : No, Sir. At least those who have moved amendment may be given an opportunity to speak.

Sardar B. S. Man: Yes, Sir. This is a very important point.

Mr. Deputy Speaker : I shall call Mr. Jhunjhunwala and after him Shri Bhatt. They have tabled amendments.

Shri Syanmandan Sahaya : Sir, I have also tabled amendments.

Mr. Deputy Speaker: I shall call them in this order, and then I shall consider any other name.

12 NOON

Shri Jhunjhunwala (Bihar) : (*English translation of the Hindi speech*). All my three amendments are in consonance with the Constitution. My first amendment provides that if this Code contains anything against any religion, no clause of this Bill shall override the provisions of the existing law; the second amendment provides that if this Code contains anything against morality, the Bill shall not override the provisions of any existing law, or any custom or usage in force; and the third provides that if this Code contains

anything against the culture of any section of the people, the Bill shall not override the existing law.

Sir, when I had moved the third amendment, you had asked as to what would be the form and definition of the word ' culture '. Yesterday, in this connection, I had wrongly quoted Article 129 of the Constitution empowering every section of people to have a culture of its own and to conserve the same. In fact it is Article 29 and not Article 129—which reads: —

"29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. " That is why I have put in the word ' culture ' here. The Hindu code, in keeping with the Constitution, cannot contain anything whatsoever that would deprive any section of people, or any community of its right to preserve its own religion or culture. I shall deal with my amendments later on. It will be recalled here that you had given a ruling to the effect that one should take the opportunity to deal with any other amendment or clause while speaking on his own amendment, or otherwise he would not be allowed to do so afterwards. It is because of this that I purpose to take this clause first and the amendments later on. Moreover, that would be more convenient to me.

Sir, when the Hindu Code Bill, which is now sought to be passed under another title, namely ' Marriage and Divorce Bill ', was placed before the House, it was said to have contained two main things. It is argued in this behalf that this Hindu Code Bill, or say. Marriage and Divorce Amendment Bill, is sought to be passed in view of the two main objectives which it aims at. In the first place, the measure is stated to be progressive ; and secondly, it is described as a legislation that would go a long way to provide women with their due rights hitherto denied to them. Men have so far been very unjust to women and it is with a view to eradicating this evil that this legislation is sought to be enacted. Now, let us see whether or not this measure is progressive. The Hon. Minister of Law did not give any definition of the word ' progressive' that might distinguish between things which are progressive and those which are not. It was stated from this side that the Hindu religion was one of a very long standing and was based on true scientific principles which alone are responsible for its survival so far despite so may atrocities committed on it. Replying to this suggestion the Hon. Law Minister was please to state that it was Lord Buddha who had disclosed the true path of the religion. The Buddha, Dr. Ambedkar said, could not tolerate to see women being subjected to men's continuous oppression and having no rights whatsoever. It made Buddha's heart bleed to see men having more rights than women and committing all sorts of atrocities on them.

It was this treatment of discrimination against one sex, the Hon. Law Minister went on to say, that led Lord Buddha to preach equality among men and women. By quoting the Hon. Doctor here I simply want to impress that

the Bill in question is stated to have been brought forward in accordance with the Buddha's teachings. Lord Buddha, a great figure as he was, was undoubtedly religious-minded. Let us, therefore, closely study as to what was the real object which he aimed at. Here I am reminded Sir, of a couplet of Sant Jnaneshwar, a renowned Maharashtrian poet, the actual words of which I do not quite recollect at the moment but it means something like this : A frog accompanied by a bee entered a tank where there were lotus flowers blooming on the water. The bee sat on the lotus and sucked its honey; it carried away with it honey and fine smell. But the frog which had accompanied the bee to the tank could only bring some mud and dirt.

SARDAR HUKAM SINGH IN THE CHAIR

Sir, the Buddha preached that the more we are able to subdue our evil desires, the better it is, for it would only help us to serve the society and then humanity as a whole in a better way. This was the highlight of his teachings. But, Sir, it is something extremely astonishing and painful too, that our Law Minister could not find any such suggestion in his teachings. What he could make out was that since men had had right of polygamy, women too must have the right to divorce in order that the effects of the former could be neutralised. I would request you sir, as also the hon. Members here, just to see what type of equality is sought to be given by this Bill.

Dr. Ambedkar : Is this all relevant on clause 4 ? Let us have some regard for relevancy. We could not altogether abandon the rule of relevancy.

Pandit M. B. Bhargava : Relevancy is not the sole monopoly of the Law Minister.

Mr. Chairman: I would request hon. Members to leave this question to me. The Hon. Minister has asked me to decide it.

Pandit M. B. Bhargava : But he himself pronounced the judgement—he did not refer it to you.

Dr. Ambedkar: Relevancy ought to be also your monopoly— not only mine.

Pandit M. B. Bhargava: It is yours

Mr. Chairman: There should not be any cross-questions and answers. I would again request Hon. Members to have greater restraint on themselves. I would ask the Hon. member who is speaking that he should be more relevant in his speech.

Shri Jhunjunwala: I was quite relevant in pointing out on to where the equality exists and where it is that we should give equal right to the women.

My friend Shri Thakur Das Bhargava observed

Mr. Chairman : I must tell him that that is not the real issue at the moment, that is whether equality should exist or not. He may refer to customs and other things, but equality is not the direct issue at this moment. We should have regard to that.

Shri Jhunjunwala: May I explain to you sir, as to how these things relate

to the real issue. I had in the beginning submitted that the Hon. Minister of Law had advocated two main points in support of this measure. Firstly, he described this Bill as a progressive measure, and secondly, he stated that this Bill sought to put women, who had not got equal rights, on equal footing with men. And now this clause 4 provides that the provisions of the Bill shall override all other things. As I said before, I shall first deal with this clause. In my opinion the measure itself is of no use when it does not go to fulfil either of the two things that are advocated in its support. Hence I am just trying to convince the Law Minister that the measure he has put before the House is absurd altogether and does not conform with the two main points which he has advocated. As a matter of fact, the measure ought not to have come at all. That is the point which I wanted the House to take note of. I may, with your permission Sir, make a few more observations in this connection and they would clear the whole thing, for otherwise the argument itself would become meaningless. I would, therefore, like you to appreciate the fact that this measure is neither progressive nor does it seek to provide women with their due rights as was advocated when the Bill was brought forward. If the clause relating to property had been taken. I could understand it because so far as property is concerned, our women have not got equal rights, they are suffering great hardships on this account and are subjected to innumerable atrocities. I am sorry Shrimati Durgabai is not here at the moment; she was kind enough to narrate some heart-rending tales with regard to women in Madras thereby causing much pain to all of us here. The question will be dealt with at length while taking up the property clause. If in reality the Law Minister was very serious about our women's betterment, he should have taken up property clause first, because we cannot possibly help women take their proper place in society unless their economic condition is well improved and they are made absolutely free in that sphere. Hence, I cannot understand why that clause is not taken first. It is none of my intention to criticise his motives, but, all the same, I cannot but say that his real object is apparently different from what he is advocating. By bringing forward this measure he seems to be intending to exterminate the Hindu religion, Hindu society and the Hindu customs and usage, thereby bringing moral degradation of the Hindu society. His aim seems to be no other than this. By taking the property clause first and thereby seeing that women's economic conditions are improved, we could have given them some solid relief. Many an Hon. Members pleaded for this but there was our Law Minister constantly nodding his head in disapproval. He perhaps does not like us to take the credit of doing something for our women which would help them and redress their grievances.

I was just referring to my friend Shri Bhargava's view that divorce was a thing which he did not like and as a matter of fact very few persons have supported it. The reason is that it is not a good thing. I may just give you an

idea as to what would happen if divorce is enforced. Daily the youths of our country would read in the papers that so many cases of divorce took place that day and that such and such person divorced his or her partner. The newspaper published in my friend Shri Brij Kishore's village in Bihar and also that which Shri Syamnandan Sahaya is going to bring out, would report such cases and they would read them. Out of all persons, Shri Brij Kishore seems to have seen greatest advantages in divorce. He would read these reports very enthusiastically. I am rather sorry that he is not here at this time otherwise he could know what madness he was indulging in while talking like that.

Sir, I was submitting what my friend Pandit Thakur Das Bhargava said that divorce was not a good thing. But he stated the reasons why he favoured the idea. He said that in the clause relating to divorce a provision was being made to make it optional. According to him it was a very important provision. He said that it was only an enabling clause. But I would submit that a number of enabling clauses have been passed here. The Hon. Minister of Industry and the Hon. Minister of Commerce have often taken refuge under this 'enabling clause'. They have said the same thing about Coca-Cola. They say if it is being manufactured, let it be; it is only an enabling clause. Similarly there is this enabling clause related to divorce. I would like to ask one thing from Pandit Thakur Das Bhargava. Suppose there are two sons of a father and one of them has married three wives. Now the other fellow goes and tells his father that if his brother could marry three and spend so much, then what should he do.

Dr. Ambedkar: He may marry four.

Shri Jhunjunwala : The father replied that he could marry five. So, according to Pandit Thakur Das's theory, if a son marries three wives, the other should marry five. Why after all he should lag behind ? This is the right he wants to give. But our friend Shri Syamnandan. Sahaya is a staunch *baniya*. What would he say ? He would say that if he has married three wives, he should immediately be turned out.

Mr. Chairman : I would request the hon. Member to discuss the subject of marriages when the question of monogamy is taken up. We are now discussing customs and rules and it would be better if he confines himself on matters relating to this subject only.

Pandit Thakur Das Bhargava : He means to suggest that one son would divorce three wives and the other five.

Shri Jhunjunwala : Sir, I would abide by your ruling and strictly follow it, but as I submitted in the beginning

Mr. Chairman: He can certainly speak on this clause.

Shri Jhunjunwala: I was speaking on the marriage clause.

Mr. Chairman: Not on the marriage clause. Clause 4 is under discussion.

Sardar B. S. Man : On a point of information. While discussing the present

clause and while moving certain amendments to the effect that from its effect certain customs may be excluded, we have to place our case by showing that those customs should be excluded for valid reasons. In that case, I suppose we are entitled to refer to the customs that are at variance with the Hindu Code and thus base our case that customs which have a long history, which have been recognised as such and which are not repugnant to public policy and thus which have the force of law should be permitted. In that respect, I beg to say that it is perfectly within the rights of Members to refer to the customs even in detail.

Mr. Chairman: It has already been laid down that as far as particular customs are concerned, they might be taken up when the particular clauses are under discussion. So far as the relevancy about this general clause is concerned, you can discuss in a general way and say that such and such a custom is very old and it has been uniformly observed. You can say that much about the status of a custom, but if we were to take up all the customs and discuss them there will be no end to. There are the relevant clauses and when they are taken up each particular custom can be discussed. That would be the better place. I do not bar this discussion. I am only requesting the Hon. Member and suggesting to him that that would be the more proper place. Here, he can discuss in a general way.

Shri Jhunjunwala : Sir, I will speak according to your ruling. But I would like to submit that I could not get an opportunity to speak on clause 2, although the Hon. Speaker ruled that, as in the case of clause 2. Members could speak practically on all matters while discussing clause 4. Only the clause relating to property, could not be discussed. I am pointing out to the House the advantages and disadvantages of the provisions relating to divorce and marriage. I think I was never irrelevant. Anyway, I would now abide by your ruling, and briefly submit my viewpoint. I now come to my amendments.

Babu Ramnarayan Singh: Very good.

Dr. Ambedkar: Take your seat now.

Shri Jhunjunwala: I will take my seat, you kindly withdraw this Code and relieve the Hindu Community of it.

Dr. Ambedkar: Please sit down.

Shri Jhunjunwala: You leave and I will sit down.

Dr. Ambedkar: Take your seat, or I will go.

Shri Jhunjunwala: You go, and I will also sit.

Mr. Chairman: I would ask the Hon. Member to continue his speech.

Shri Jhunjunwala: I am coming to my speech but the Law Minister, who is a responsible person, is indulging in unnecessary interruptions. He wants that this thing should be talked over and Government's money be spent somehow. He is not so anxious to grant equal rights to women but he is more keen to see that Government's money is spent somehow so that people outside might know that the Law Minister is not idle.

Mr. Chairman : May I request the Hon. Member that he should proceed with his speech instead of answering these questions.

Shri Jhunjunwala : Sir, I am prepared to abide by your orders. But when any Hon. Member interrupts, it becomes difficult to proceed further and it also takes more time to come to the speech proper.

Dr. Ambedkar: Do not get nervous, they are your comrades.

Shri Jhunjunwala : Comrades also desert sometimes. I have had a number of comrades like you. You have been professing yourself to be a champion of women's cause, but ultimately deserted them. Sir, I am continuing with my speech but the Hon. Minister interrupts.

Sardar B. S. Man : Will it not be discourteous to the Hon. Law Minister to ignore the interruptions and not to reply to it ?

Shri Jhunjunwala : Then there is another point which I would like to submit. Pandit Thakur Das Bhargava said that if anything is suggested that might lead to some harm and if anybody is doing a wrong thing, then how far is it proper to ask others also to do the same thing ? How far is it wise to ask women to do wrong to men if the latter are behaving in that manner ? That is what I am going to point out.

Then we have to see whether this thing is progressive or not. Our Hon. Minister of Home Affairs, Shri Rajaji is not here at present. He made some remark while referring the Press Bill to Select Committee. He said that an article or a caricature about him (I do not exactly remember what it was) appeared in some paper. When he saw it, he found it most revolting and at the same time very obscene. He did not know why it was published and felt it very much. But he said when he saw the newspapers of the present day, he felt there was nothing special in that paper which should have offended him (*Interruptions*). My hon. Friends are trying to interrupt me.

Mr. Chairman: If you address the Chair perhaps you will not feel that inconvenience.

Shri Jhunjunwala: I am accustomed to look all round while speaking.

So, he said that it was quite insignificant. As compared to the articles and caricatures that appear in the present day press, that thing did not seem to be obscene at all. He said he felt it unnecessarily. The newspapers force us to see and read those things that we do not like to see, and young men and women of the country read them. God knows what influence those things might be leaving on our youths.

Now, I wanted to ask at that time whether these articles etc. that appear in our press are progressive. These are far more obscene than that which you thought to be quite vulgar. Then, are they progressive and if they are progressive do they prove beneficial for us ? So, I wanted to point out that our Law Minister who is the Manu of *Kaliyug*

Shri Syamnandan Sahaya: *Not the Manu of Kaliyug but Kaliyugi Manu.*

Shri Jhunjunwala : We are living in *Kaliyug* hence I called him the Manu

of *Kaliyug*. Our Hon. Minister Shri Gadgil who considers himself to be an outcast Brahmin and thinks he is a *Pandit* has given him this title. All that I mean to say is that he is the Manu of this age. I wanted to know whether the purpose of this progressive measure is to uplift our society or to degrade and demoralize it. I could have understood the whole thing if he had convinced me before I had moved my amendments that the measure was progressive in such and such manner. He only said that it was progressive and that women should be given equal rights. He has denied those rights to them that they needed most and which could have benefited them very much. The right which he is giving to them is that of divorce. So, I was trying to point out whether this is really progressive. I say this can never be progressive. If a person does something wrong, it is not wise that I should also repeat the same thing for that reason. On the other hand, such legislation should be made whereby the person doing a wrong thing might be forbidden to do it in future. It should not be that the other person may also be asked to follow him.

That was about this clause. Now, I would move my amendments and fully express my views on them. I have already read them out and so I would not read them again. This will take more time.

Shri Syamnandan Sahaya : How would we understand and vote upon them.

Mr. Chairman: Has he already read them ?

Shri Jhunjunwala: Yes Sir, I have read them.

Mr. Chairman : Then there is no necessity of reading them again.

Shri Syamnandan Sahaya : We have to vote upon them. You must read them.

Shri Jhunjunwala: My first amendment is that if anything in the Code is against the Hindu, Sikh, Jain or Buddhist religions or against Marumakkattayam and Aliyanthanam laws, then it shall not apply to them.

Dr. Ambedkar: It shall apply only to the *marwaris*.

Shri Jhunjunwala : Had it not applied to the *marwaris*, even then I would not have sat. This code is dangerously harmful to the society and the country.

Mr. Chairman: The Hon. Member should continue.

Shri Jhunjunwala : The Hon. Minister is interrupting and casting aspersions. Our Constitution provides for equal rights. Why do you not allow me to reply to his remarks ?

Mr. Chairman : I am also asking him not to interrupt, the Hon. Member may go on.

Shri Jhunjunwala : You turn towards him and then say, so that he may hear.

Mr. Chairman : I have acquired this habit from the Hon. Member. I would ask the Hon. Minister not to interrupt.

Shri Jhunjunwala : Now in this connection, I would like to read before the House Article 25 of the Constitution. I would request the Hon. Members to

listen patiently:

" 25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess practice and propagate religion. "

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

Babu Ramnarayan Singh: Kindly translate it into Hindi.

Shri Jhunjhunwala : You engage a teacher for that. Then there is :

" (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

After that there is explanation which I need not read. So I submit to the Chair and the Hon. Members of this House that the purpose of my amendments is that when you make an effort to introduce reforms, you have no right to touch our *Dharmshastms*. But you can bring in any measure if it does not conflict with our *shastras* and our religion. My amendment relates to the following:

" any text, rule, or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code. "

" Any other law in force immediately before the commencement of this Code shall cease to have effect in so far as it is inconsistent with the provisions of this Code. "

I want to submit that I have no objection to this legislation. It is all right but if there is anything which is against any religion, Hindu, Sikh or Jain then it would not apply to it. Shir Naziruddin Ahmad: And Muslims? Shri Jhunjhunwala: Muslims do not come in the purview of this Bill. Then, in the next amendment, there is morality in place of religion. You cannot provide for anything in the law which has its effect on the morality of the people and which leads to their moral degeneration. This is what I have to say. This amendment should be added. We have been given this right under the Constitution. If this amendment is not accepted, I would think that our Government is slandering and vilifying our religion. They should not do it.

My third amendment is based on Article 29, wherein the following has been said about culture:

"29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. " My submission is that if this code affects or comes in conflict with our culture or the culture of Hindus, Sikhs, Jains or the culture of any section of the Hindus, then again it shall not be applicable

under those circumstances.

[Mr. Deputy Speaker *in the Chair*]

Therefore, while moving these three amendments before the House,. I would urge the Hon. Members to accept my amendments first and then pass the clause. In the first instance I would ask them, not to pass the clause at all but if they pass it my amendments should also be accepted along with it. I would not take any more time now and finish.

(English translation concluded).

All Hon. Member: Closure, Sir.

Shri Bharati: I move that the question be now put.

Several Hon. Members: No; no.

Mr. Deputy Speaker: The hon. Members will kindly take their seats. I will put the question to the House.

Shri Naziruddin Ahmad: Before that. Sir, I beg to state that we have submitted amendments. We have a right to speak on them. We have something to say upon them. The merits of our amendments should be discussed.

Mr. Deputy Speaker: I agree.

Shri Syamnandan Sahaya: One more submission Sir. You had just now announced that after Mr. Jhunjhunwala, Mr. Bhatt would speak and that after that, you would decide as to what should happen.

Mr. Deputy Speaker: I least expected that the Hon. Member Mr. Jhunjhunwala would take up so much time. His amendment is a very small one. He has taken too much time. I thought that within that time two Hon. Members might speak. We have had a discussion on this particular clause since yesterday. So far as this clause is concerned, if it had stood alone, I would not have come to any conclusion. We have discussed this to a large extent on the definition clause, what custom is, what its ingredients are, and so on. Taking both of them together, I feel that there has been sufficient discussion on this. Therefore, I shall put the motion to the House. Let the House accept it or reject it.

Shri Bhatt: There is an amendment in my name also.

Shri Syamnandan Sahaya : As Mr. Naziruddin Ahmad stated, we have tabled amendments. We wanted to speak on clause 2 also. After all, even if you pass this clause today, this matter is not finished. There are 50 or 55 clauses to be gone through. Therefore, I wish to make this submission. This is a very important clause because it is here that we lay down that the texts will not be taken into consideration. It is a matter of very primary importance. It will be another matter if we are dealing with clauses about procedural matter, clauses laying down the procedure for marriage and divorce. You may accept a closure or proceed comparatively quickly. But the question whether the

texts should be abrogated, whether custom should be abrogated, that is a very vital matter. Therefore, I will again submit most respectfully this. If you are going to finish the Bill today and the Act is going to be passed, then, it is a different matter and we will submit to the closure. That is not the case and therefore we should allow time to the movers of the amendments.

Mr. Deputy Speaker: How can you say that ?

Shri Syamnandan Sahaya: We have to go through 55 clauses. So far as this clause is concerned, you should allow some more discussion. I think in this matter I have the opinion of a good number of Members on my side.

Pandit Thakur Das Bhargava : May I submit in all humility. Sir, that sometimes when amendments are moved in this House by a large number of members and the real intention of the mover is to get a chance to speak, the situation is quite different. When, on a Bill particular amendments are given, I beg of you kindly to see if the amendment is one of substance. Then, the person moving the amendments should be allowed to speak ordinarily.

Shri Bharati: It is left to the discretion of the Chair.

Pandit Malaviya (Uttar Pradesh): There are still many people who wish to speak on this point, and even though the House may pass the thing, I feel that in a matter of this nature, the least that we can do is to listen to them and then come to any decision. I feel therefore, that we should allow people an opportunity to speak. And indeed, if there is an opportunity, I myself would like to say something about this clause. I hope, sir, we will have the opportunity at least to have our say. The House may not agree with our view; but I feel it will be tyranny if we are not allowed an opportunity even to have our say. There might have been a good deal of discussion on any point, but that does not mean that we should not give an opportunity to those who have not been able to have their say. Therefore, I humbly request that you may kindly allow the discussion on this to go on.

Shri Bharati : Sir, it is absolutely within your discretion to decide, after taking into consideration the totality of the circumstances. We cannot

Shri Syamnandan Sahaya : I can only appeal to the Chair that since there are many who have yet to

Dr. Ambedkar: There has been sufficient debate already and (*Interruptions*) Sir, I would like to submit that in deciding whether closure should be applied or not, the issue is not whether every Member who wants to speak has spoken. The issue is whether there has been sufficient discussion or not.

Shri Syamnandan Sahaya : But every Member who ought to speak should have been allowed to speak. And, sir, you yourself said that you would allow me to move my amendment to make this provision consistent with the clause.

Pandit Malaviya: While a Member is actually in the midst of his speech, I think, the question is even a little different from what it is when normally the question for closure is put. There is some difference.

Mr. Deputy Speaker: But no Member is now speaking.

Pandit Malaviya : This is a matter of sufficient importance. You will find that those who want to speak have not spoken on this point at all. For instance, I have not spoken a word on this point.

Mr. Deputy Speaker : Hon. members must remember this point— and it has also been referred to by the Hon. Law Minister—that it is not as if every Member who wants to speak on an amendment or a motion, should be given an opportunity.

Shri Naziruddin Ahmad: But those who have given amendments?

Mr. Deputy Speaker : Then every Hon. Member will submit an amendment so that he may be allowed to speak. That cannot be the criterion. The Chair can be expected to weigh the pros and cons and come to the conclusion whether there has been sufficient debate or not on a particular viewpoint. It may be that the particular Hon. Member who has tabled the amendment has not pressed it ; but some other Hon. Member may have done it, perhaps much more eloquently and forcibly.

Shri Naziruddin Ahmad: No, sir.

Mr. Deputy Speaker: It is a question to be judged by a third person, and I feel that there has been sufficient discussion over this matter.

Shri Syamnandan Sahaya : The points raised in these amendments are different. It is a quite different matter if the same type of amendments are discussed together. But there are particular aspects of these amendments which have not been pressed and those aspects must be considered. That is one submission as this. We are to decide here and now and once and for all, that texts, customs and usages will be given the go-by. Therefore, the importance of this clause is far more than that of any other that you might discuss in the whole of this Bill.

Mr. Deputy Speaker: Now that this point has been raised. I would like to ask the Hon. Law Minister whether in view of what has been said, it is possible to use the word " inconsistent " in both the parts.

Dr. Ambedkar : That is another matter. I do not propose to make the change and if you will give me a chance. I will explain why.

Pandit Malaviya : Sir, now that the Leader of the House is here, can we make an appeal to him ?

Mr. Deputy Speaker: No. I feel that there has been sufficient discussion.

- The question is:

" That the question be now put. "

The House divided: Ayes, 63: Notes, 34.

Division No. 3.

Ayes

12-54 p.m.

Alagesan, Shri

Das, Shri B. K.

Guha, Shri G. S.

Ambedkar, Dr.

Das, Shri Ram Dhani

Hasan, Shri M. A.

Ansari, Shri

Devi Singh,

Dr. Hazarika, Shri J. N.

Baldev Singh, Sardar . Durgabai, Shrimati Hazarika, Shri M.
 Barman, Shri Gadgil, Shri Himatsinghji, Major
 Bharati, Shri Ghalib, Shri General
 Borooah, Shri Gandhi, Shri Feroz Iyyunni, Shri
 Brajeshwar Prasad, Shri Ghose, Shri S. M. Jagjivan Ram, Shri Chaudhuri,
 Shrimati Ghule, Shri Jain, Shri A. P. Kaimala.
 Gopalaswami, Shri Jajoo, Shri
 Jangde, Shri Moidu Moulavi Satish Chandra, Shri
 Jayashri, Shrimati Nehru, Shri Jawaharlal Sharma, Pandit
 Kanaka Sabai, Shri Obaidullah, Shri Chandra.
 Kesar, Dr. Pant, Shri D. D. Shi Charan Lal, Shri
 Krishnamachari, Shri Pillay, Shri Shivan Shukla, Shri S, N.
 T. T. Poonacha, Shri Sidhva Shri
 Kunzru, Pandit Pustake, Shri Subbiah, Shri
 Lakshmanan, Shri Raj Bahadur, Shri Subramaniam, Dr. V.
 Mirza, Shri Venkataraman,

NOTES

<u>Achint Ram, Lala</u>	<u>Indra Vidyavachaspathi</u>	<u>Sahaya, Shri Shyam Nandan</u>
<u>Bhargava, Pandit M. B.</u>	<u>Pathi Shri</u>	<u>Nandan</u>
<u>Bhargava, Pandit</u>	<u>Jhunjunwala, Shri</u>	<u>Shah, Prof. K. T.</u>
<u>Thakur Das</u>	<u>Maitra, Pandit</u>	<u>Sharma, Pandit</u>
<u>Bhatt, Shri</u>	<u>Malaviya, Pandit</u>	<u>Balkrishna</u>
<u>Chandrika Ram</u>	<u>Man, Sardar B. S.</u>	<u>Shukia, Shri A. C.</u>
<u>Das, Shri Nandkishore</u>	<u>Naziruddin Ahmad, Shri</u>	<u>Singh, Capt. A. P.</u>
<u>Das, Shri Sarangdhar</u>	<u>Oraon, Shri</u>	<u>Snatak, Shri</u>
<u>Das, Shri S. N.</u>	<u>Pannalal Bansilal, Shri</u>	<u>Sondhi, Shri</u>
<u>Dholakia, Shri</u>	<u>Ramnarayan Singh, Babu</u>	<u>Tek Chand, Dr.</u>
<u>Gupta, Shri V. J.</u>	<u>Ranbir Singh Ch.</u>	<u>Vaidya, Shri V. B.</u>
<u>Hukam Singh, Sardar</u>	<u>Raut, Shri</u>	<u>Yashwant Rai, Prof.</u>

Dr. Ambedkar: I have already explained, when I intervened earlier, as to what exactly is the position of custom under clause 4 which is the subject matter of discussion. At that time I explained that so far as clause 4 is concerned, it does not say that no custom shall be recognised. My amendment to clause 4 is " Save as otherwise expressly provided in this Code ", which means that if Parliament agrees to save any particular custom from the operation of any particular clause it is still open to Parliament to do so. Therefore, it is quite wrong on the part of Members of Parliament who have dilated on the question of custom to suggest that this clause is so worded as not to leave any room or place for custom. All that has been said

that this Code is trying to abrogate custom altogether is to my mind based upon a complete misunderstanding. As I have already said, it is still open to members of Parliament who are interested in a particular custom to raise that question under the appropriate clause of this Bill when it will be open to discussion and I shall be able to express my opinion whether I am in a position to accept that custom or I am not in a position to accept that custom. Therefore, that position is perfectly safeguarded even if clause 4 is passed in the form in which I have suggested it should be passed.

The only other point to which I wish to make reference is the point made by my friend coming from one of the tribes, Mr. Theble Oragon. It seems to me that he has not read the provisions of clause 2 which this House has already passed. Sub-clause (2) of clause 2 says to what persons it shall not apply. To that there is a proviso. My submission is that in the case of persons who belong to certain tribes which are not altogether Hinduised completely—so that with regard to them we could say that the Hindu Law as such applies to them in the same way as it applies to those who are in fact and in law, *de jure and de facto*, Hindus—it is only those parts of the Hindu Law which they have adopted that will be regarded as applicable to them and not the whole of the Code. Consequently there need be no fear in the minds of members of those communities which are still in a tribal condition and which follow different ways and different modes and different laws with regard to their marriage and divorce. They are still safeguarded except that if it is proved that they have adopted any particular part of the Hindu Law, it is only to that extent that they will be governed by this Code and not otherwise. My submission is that we have taken every precaution by adding the proviso to sub clause (2) not to impose the whole of the Hindu Law which will be enacted in Part II upon them. They have still the freedom to go their way except to the extent which has been provided in this proviso.

One other point to which I would like to make a passing reference is the point made by my friend Dr. Pande and my friend Mr. T. N. Singh. They have said, I believe in almost unequivocal terms, that customs, which exist today, must be safeguarded and nothing should be done to abrogate them. My friend, Dr. Pande, I believe, is a young graduate; I do not wish to say a raw but a young graduate from the University who probably has yet to study what the institution of Parliament means...

An hon. Member: He is a professor and a secretary.

Dr. Ambedkar: I am very sorry, but he is still ignorant on certain aspects. People talk about customs in the country. Well, why have customs grown? Why do the *Smritikaras* allow custom to continue? I think the answer to that question is to be found in the fact that so far as this country is concerned, there never was such a thing as a Parliament representing the people, coming here and legislating about their social relationship; there never has been such a thing at all. (*Interruption*). I do not know whether we are better or

not. The reason, and the principal reason, why custom has been allowed to govern the life of the people in this country and in a manner much more rigorous than is to be found in any other part of the world

Shri Syamnandan Sahaya: If I am not mistaken the common law in England still prevails although there has been a Parliament for ages.

Dr. Ambedkar : I know that he is much more informed on certain subjects than I am.

Shri Syamnandan Sahaya : Dr. Ambedkar, I have never accepted that you are omniscient and that you have all the knowledge. It may be that in certain matters I may have better information.....

Dr. Ambedkar: I agree that you are. My point is that in view of the fact

Shri Bhatt : I would like to remind the Hon. Dr. as to where from we got the word *parishad* and how the word *Rajya-parishad* has come into being.

Dr. Ambedkar: That *parishad* is another thing.

Shri Bhatt: That *Parishad* is another thing.

Shri Bhatt: That was nothing but a form of *Parishad*.

Dr. Ambedkar : *Parishad* is only a Council ; it is not a Parliament. It has never been. What other way was left open to the people to regulate their life except to make their own custom, because there was no Parliament, there was no Legislature and nothing of the kind ? But when we have got a Parliament, the function of which is to make law, the question that we have to consider and very seriously consider is whether we are going to allow the people as such who are outside the Parliament to have a parallel authority to make their customary laws and the Parliament should have no right to interfere in them. I think, that is a very serious question that we have to consider. It is quite one thing to say that where custom have grown and they are valid customs, in the way in which a valid custom has been defined in clause 2 of this Bill, they should be retained. That is a very different question. But to say that nowhere custom should be altered, amended, changed is really to abrogate the authority of Parliament and I am very doubtful that any such proposition would be accepted by Parliament and that is a matter about which I have considerable doubt and I also go further and say whether Parliament could continue to be that necessary and useful instrument for changing the ways of life for which it has been designed, if the proposition which had been supported by Messrs. Pande and T. N. Singh was accepted, that Parliament should have no jurisdiction with regard to customary laws.....

Mr.. Deputy Speaker: Will the Hon. Law Minister take a long time?

Dr. Ambedkar : I am just closing.

Shri Naziruddin Ahmad : All our points have not been dealt by the Hon. Minister. What becomes of those amendments which we have moved? Would they be expunged

Shri T. N. Singh : On a point of personal explanation. The Hon. Law Minister says that I urged that each and every one of the customs should be

scrupulously observed. I think that he did not probably understand my Hindi

Dr. Ambedkar: It is quite possible.

Shri T. N. Singh: What I said was that all customs should not be lightly abrogated by a law. What I want

Dr. Ambedkar: On that point, I am in agreement.

Shri T. N. Singh: I want to ask if the Hon. Law Minister has got any detailed list of the customs prevalent in the country. In the ignorance of all the customs of the country to say that all customs shall not be applicable, is not proper. That is exactly what I said.

Dr. C. D. Pande: One thing has been said. Sir

Dr. Ambedkar: You can come to my room and say that.

Dr. C. D. Pande : Dr. Ambedkar has said this in Parliament and I wish it should be clarified in Parliament. I did not say that Parliament had no authority to make laws for the customary things. I appealed to Parliament not to touch their laws. That is a quite different position than what the Law Minister makes out.

Mr. Deputy Speaker : I shall put the clause and the amendments in this order.

Shri Syamnandan Sahaya: Before you put them. Sir I submit it is 1-15 already. As I said, this is a very vital clause where the texts, customs and usages are being abrogated. Therefore, we desire to divide on the amendments that have been moved. It will take a long time. Therefore, I submit that the actual motion may be put on another day whatever it. Some hon. Members: Yes, yes. Some hon. Members: No, no.

Dr. Ambedkar: It will not take more than five minutes.

Some hon. Members: No, no.

Capt. A. P. Singh : There are so many amendments ; it will take four hours (*Interruption*).

Mr. Deputy Speaker: Order, order. What is going to be gained

Shri Sondhi (Punjab): There may be division. Sir.

Shri Naziruddin Ahmad : We will ask for division at every stage. We want to go by justice and not by arbitrary rules.

Mr. Deputy Speaker: The Hon. Member may be certain that justice will be rendered. But, the question is, the House had accepted the closure; the debate is over; the Hon. Law Minister has replied.

Pandit Malaviya: The House would have accepted the closure if you had put it five minutes after the debate began. It is the tyranny of the majority that is being forced on us (*Interruption*).

Shrimati Durgabai (Madras): It is the tyranny of the minority over the majority: not the tyranny of the majority.

Shri Naziruddin Ahmad: Tyranny of women.

The Minister of State for Transport and Railways (Shri Santhanam) :

The hon. Member should withdraw his word ; I think it is contempt of Parliament.

Some Hon. Members: No, no, no contempt.

Mr. Deputy Speaker: Let us not be too sentimental over these matters. After all. Parliament has to go by language and no doubt, it must be moderate. There are in all about eleven amendments.

Shri Syamnandan Sahaya: It will take an hour at least.

Mr. Deputy Speaker: In view of what has happened, I thought we could get through these amendments quickly.

Some hon. Members: No, no.

The House then adjourned till half Past Eight of the Clock on Monday, the 24th September, 1951.

Clause 4.—(Overriding effect of Code).

The Minister of Law (Dr. Ambedkar) : May I submit. Sir, that my motion with respect to clause 4 of the Hindu Code, which was held over, may be put and then the other business may be taken up ?

Mr. Deputy Speaker : The Hon. Minister wants preference to be given to that Bill with respect to that part of it. The other day the discussion and reply on the clause was over, but just as I was about to put it to the House Hon. Members said it might take a long time and as it was 1-15 p.m. we had to adjourn. We will now finish it. I will now put the amendment of Pandit Thakur Das Bhargava. The question is: That for clause 4, the following be substituted:

" 4. Any text rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with in this Code. " The motion was negatived.

Mr. Deputy Speaker : Now we come to amendment No. 449.

Pandit Thakur Das Bhargava (Punjab) : I beg to withdraw it. The amendment was, by leave, withdrawn.

Mr. Deputy Speaker: The question is: That in the amendment proposed by the Hon. Dr. Ambedkar, in part (a) of the proposed clause 4, the words " or any custom or usage " be omitted.

The motion was negatived

Mr. Deputy Speaker: The question is:

That in the amendment proposed by the Hon. Dr. Ambedkar, in the proposed new clause 4,—

(i) in part (a), after the words " dealt with in this Code " the words " after ten years from the commencement of this code " be inserted ; and (ii) after part (b) the following *Explanation* be added:

" *Explanation.*—Notwithstanding anything contained in subsection (a), for a period of ten years from the commencement of this Code, any text, rule or any custom or usage in force, shall have effect. "

The motion was negatived.

Mr. Deputy Speaker: The question is:

That in the amendment proposed by the Hon. Dr. Ambedkar, in part (a) of the proposed clause 4, after the words ' this Code ', where they occur for the second time, the words " in so far as it is inconsistent with any of the provisions contained in this code " be inserted.

The motion was negatived.

Mr. Deputy Speaker: We pass on to the next amendment now. The question is:

That in the amendment proposed by the Hon. Dr. Ambedkar, to the proposed clause 4, the following proviso be added:

" Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies. "

The motion was negatived.

Mr. Deputy Speaker : The next amendment is 380. The question is: That for clause 4, the following be substituted:

" 4. All texts, rules or interpretations of Hindu Law or all customs and usages and all other law in force immediately before the commencement of this Act, in so far as they may be inconsistent with this Act, shall, to the extent of the inconsistency, cease to have effect. "

The motion was negatived.

Mr. Deputy Speaker: The question is: That for clause 4, the following be substituted:

" 4. All texts relating to, and all rules of interpretation of Hindu Law in the sacred books or in judicial pronouncement of superior courts in India or of the Judicial Committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediately before the commencement of this Code, in so far as they are inconsistent with this code, shall, to the extent of the inconsistency, cease to have effect. "

The motion was negatived.

Mr. Deputy Speaker: The next one is 420.

Pandit Thakur Das Bhargava: I beg to, withdraw it.

The amendment was, be leave, withdrawn.

Mr. Deputy Speaker : The amendment No. 129 by Sardar Hukam Singh is barred. Now 130. The question is: That to clause 4, the following proviso be added:

" Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion to the followers of which religion or religions this Code will apply:

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it. "

The motion was negative.

Mr. Deputy Speaker : I shall now put Dr. Ambedkar's amendment No. 6. The question is: for clause 4, substitute :

" 4. *Overriding effect of Code.* —Save as otherwise expressly provided in this Code :—

(a) any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with *any* of the provisions contained in this Code. "

The motion was adopted.

Mr. Deputy Speaker: The question is: " That clause 4, as amended, stand part of the bill. "

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Mr. Deputy Speaker: The House will now proceed with other legislative business.

Pandit Maitra (West Bengal) : What about, the further clauses ?

Mr. Deputy Speaker: The other business is on the order paper. After that is disposed of, this will be taken up.

Annexure I

Statement by

Dr. B. R. Ambedkar in explanation of his
RESIGNATION

The House I am sure knows, unofficially if not officially, that I have ceased to be a Member of the Cabinet. I tendered my resignation on Thursday the 27th September to the Prime Minister and asked him to relieve me immediately. The Prime Minister was good enough to accept the same on the very next day. If I have continued to be a Minister after Friday the 28th, it is because the Prime Minister had requested me to continue till the end of the Session—a request to which I was, in obedience to constitutional convention, bound to assent.

Our Rules of Procedure permit a Minister who has resigned his office, to make a personal statement in explanation of his resignation, Many members of Cabinet have resigned during my tenure of office. There has been however no uniform practice in the matter of Ministers who have resigned making a statement. Some have gone without making a statement and others have gone after making a statement. For a few days I was hesitant what course to follow. After taking all circumstances into consideration I came to the

conclusion that the making of a statement was not merely necessary, but it was a duty which a member who has resigned owes to the House.

The House has no opportunity to know how the Cabinet works from within, whether there is harmony or whether there is a conflict, for the simple reason that there is a joint responsibility under which a member who is in a minority is not entitled to disclose his differences. Consequently the House continues to think that there is no conflict among members of Cabinet even when as a matter of fact a conflict exists. It is, therefore, a duty of a retiring Minister to make a statement informing the House why he wants to go and why he is not able to continue to take further joint responsibility.

Secondly, if a Minister goes without making a statement, people may suspect that there is something wrong with the conduct of the Minister, either in his public capacity or in his private capacity. No Minister should, I think, leave room for such suspicion and the only safe way out is a statement.

Thirdly we have our newspapers. They have their age-old bias in favour of some and against others. Their judgements are seldom based on merits. Wherever they find an empty space, they are prone to fill the vacuum by supplying grounds for resignation which are not the real grounds but which put those whom they favour in a better light and those not in their favour in a bad light. Some such thing I see has happened even in my case.

It is for these reasons that I decided to make a statement before going out.

It is now 4 years, 1 month and 26 days since I was called by the Prime Minister to accept the office of Law Minister in his Cabinet. The offer came as a great surprise to me. I was in the opposite camp and had already been condemned as unworthy of association when the interim Government was formed in August 1946. I was left to speculate as to what could have happened to bring about this change in the attitude of the Prime Minister. I had my doubts. I did not know how I could carry on with those who had never been my friends. I had doubts as to whether I could, as a Law Member, maintain the standard of legal knowledge and acumen which had been maintained by those who had preceded me as Law Ministers of the Government of India. But I kept my doubts at rest and accepted the offer of the Prime Minister on the ground that I should not deny my co-operation when it was asked for in the building up of our nation. The quality of my performance as a Member of the Cabinet and as Law Minister, I must leave it to others to judge.

I will now refer to matters which have led me to sever my connection with my colleagues. The urge to go has been growing from long past due to variety of reasons.

I will first refer to matters purely of a personal character and which are the least of the grounds which have led me to tender my resignation. As a result of my being a member of the Viceroy's Executive Council, I knew the Law Ministry to be administratively of no importance. It gave no opportunity for

shaping the policy of the Government of India. We used to call it an empty soap box only good for old lawyers to play with. When the Prime Minister made me the offer, I told him that besides being a lawyer by my education and experience, I was competent to run any administrative Department and that in the old Viceroy's Executive Council I held two administrative portfolios, that of Labour and C.P.W.D., where a great deal of planning projects were dealt with by me and would like to have some administrative portfolio. The Prime Minister agreed and said he would give me in addition to Law the Planning Department which, he said, he was intending to create. Unfortunately the Planning Department came very late in the day and when it did come I was left out. During my time, there have been many transfers of portfolios from one Minister to another. I thought I might be considered for any one of them. But I have always been left out of consideration. Many Ministers have been given two or three portfolios so that they have been overburdened. Others like me have been wanting more work. I have not even been considered for holding a portfolio temporarily when a Minister in charge has gone abroad for a few days. It is difficult to understand what is the principle underlying the distribution of Government work among Ministers which the Prime Minister follows. Is it capacity? Is it trust? Is it friendship? Is it pliability? I was not even appointed to be a member of main Committees of the Cabinet such as the Foreign Affairs Committee or the Defence Committee. When the Economic Affairs Committee was formed, I expected, in view of the fact that I was primarily a student of Economics and Finance, to be appointed to this Committee. But I was left out. I was appointed to it by the Cabinet, when the Prime Minister had gone to England. But when he returned, in one of his many essays in the reconstruction of the Cabinet, he left me out. In a subsequent reconstruction my name was added to the Committee, but that was as a result of my protest.

The Prime Minister, I am sure, will agree that I have never complained to him in this connection. I have never been a party to the game of power politics inside the Cabinet or the game of snatching portfolios which goes on when there is a vacancy. I believe in service, service in the post which the Prime Minister, who as the head of the Cabinet, thought fit to assign to me. It would have, however, been quite unhuman for me not to have felt that a wrong was being done to me.

I will now refer to another matter that had made me dissatisfied with the Government. It relates to the treatment accorded to the Backward Classes and the Scheduled Castes. I was very sorry that the Constitution did not embody any safeguards for the Backward Classes. It was left to be done by the Executive Government on the basis of the recommendations of a Commission to be appointed by the President. More than a year has elapsed since we passed the Constitution. But the Government has not even thought of appointing the Commission. The year 1946 during which I was out of office,

was a year of great anxiety to me and to the leading members of the Scheduled Castes. The British had resided from the commitments they had made in the matter of constitutional safeguards for the Scheduled Castes and the Scheduled Castes had no knowing as to what the Constituent Assembly would do in that behalf. In this period of anxiety I had prepared a report* on the condition of the Scheduled Castes for submission to the United Nations. But I did not submit it. I felt that it would be better to wait until the Constituent Assembly and the future Parliament was given a chance to deal with the matter. The provisions made in the Constitution for safeguarding the position of the Scheduled Castes were not to my satisfaction. However, I accepted them for what they were worth, hoping that the Government will show some determination to make them effective. What is the position of the Scheduled Castes today? So far as I see, it is the same as before. The same old tyranny, the same old oppression, the same old discrimination which existed before, exists now, and perhaps in a worst form. I can refer to hundreds of cases where people from the Scheduled Castes round about Delhi and adjoining places have come to me with their tales of woes against the Caste Hindus and against the Police who have refused to register their complaints and render them any help. I have been wondering whether there is any other parallel in the world to the condition of the Scheduled Castes in India. I cannot find any. And yet why is no relief granted to the Scheduled Castes? Compare the concern the Government shows over safeguarding the Muslims. The Prime Minister's whole time and attention is devoted for the protection of the Muslims. I yield to none, not even to the Prime Minister, in my desire to give the Muslims of India the utmost protection wherever and whenever they stand in need of it. But what I want to know is, are the Muslims the only people who need protection? Are the Scheduled Castes, the Scheduled Tribes and the Indian Christians not in need of protection? What concern has he shown for these communities? So far as I know, none and yet these are the communities which need far more care and attention than the Muslims.

I could not contain within myself the indignation I have felt over the neglect of the Scheduled Castes by the Government and on one occasion I gave vent to my feelings at a public meeting of the Scheduled Castes. A question was asked, from the Hon'ble the Home Minister, whether my charge that the Scheduled Castes had not benefited by the rule which guaranteed to them 12 1/2, per cent representation was true. In answer to the question the Hon'ble the Home Minister was pleased to say that my charge was baseless. Subsequently for some reason—it may be for satisfying the qualms of his conscience—he, I am informed, sent round a circular to the various Departments of the Government of India asking them to report how many Scheduled Caste candidates had been recently recruited in Government service. I am informed that most Departments said in reply 'NIL' or nearly nil. If my information is correct, I need make no commentary on the answer given

by the Hon'ble the Home Minister.

From my early childhood I have dedicated myself to the upliftment of the Scheduled Castes among whom I was born. It is not that there were no temptations in my way. If I had considered my own interests, I could have been anything I wanted to be and if I had joined the Congress I would have reached to the highest place in that organisation. But as I said, I had dedicated myself to the upliftment of the Scheduled Castes and I have followed the adage which says that it is better to be narrow-minded if you wish to be enthusiastic about a cause which you wish to accomplish. You can therefore, well imagine what pain it has caused me to see that the cause of the Scheduled Castes has been relegated to the limbo of nothing.

The third matter which has given me cause, not merely for dissatisfaction but for actual anxiety and even worry, is the foreign policy of the country. Any one, who has followed the course of our foreign policy and along with it the attitude of other countries towards India, could not fail to realise the sudden change that has taken place in their attitude towards us. On 15th of August 1947 when we began our life as an independent country, there was no country which wished us ill. Every country in the world was our friend. Today, after four years, all our friends have deserted us. We have no friends left. We have alienated ourselves. We are pursuing a lonely furrow with no one even to second our resolutions in the U.N.O. When I think of our foreign policy, I am reminded of what Bismark and Bernard Shaw have said. Bismark has said that " politics is not a game of realising the ideal. Politics is the game of the possible. " Bernard Shaw not very long ago said that good ideals are good but one must not forget that it is often dangerous to be too good. Our foreign policy is in complete opposition to these words of wisdom uttered by two of the world's greatest men.

How dangerous it has been to us this policy of doing the impossible and of being too good is illustrated by the great drain on our resources made by our military expenditure, by the difficulty of getting food for our starving millions and by difficulty of getting aid for the industrialisation of our country.

Out of 350 crores of rupees of revenue we raise annually, we spend about Rs. 180 crores of rupees on the Army. It is a colossal expenditure which has hardly any parallel. This colossal expenditure is the direct result of our foreign policy. We have to foot the whole of our Bill for our defence ourselves because we have no friends on which we can depend for help in any emergency that may arise. I have been wondering whether this is the right sort of foreign policy.

Our quarrel with Pakistan is a part of our foreign policy about which I feel deeply dissatisfied. There are two grounds which have disturbed our relations with Pakistan—one is Kashmir and the other is the condition of our people in East Bengal. I felt that we should be more deeply concerned with East Bengal where the condition of our people seems from all the newspapers intolerable

than with Kashmir. Notwithstanding this we have been staking our all on the Kashmir issue. Even then I feel that we have been fighting on an unreal issue. The issue on which we are fighting most of the time is, who is in the right and who is in the wrong. The real issue to my mind is not who is in the right but what is right. Taking that to be the main question, my view has always been that the right solution is to partition Kashmir. Give the Hindu and Buddhist part to India and the Muslim part to Pakistan as we did in the case of India. We are really not concerned with the Muslim part of Kashmir. It is a matter between the Muslims of Kashmir and Pakistan. They may decide the issue as they like. Or if you like, divide it into three parts; the Cease-fire zone, the Valley and the Jammu-Ladhak Region and have a plebiscite only in the Valley. What I am afraid of is that in the proposed plebiscite, which is to be an overall plebiscite, the Hindus and Buddhists of Kashmir are likely to be dragged into Pakistan against their wishes and we may have to face the same problems as we are facing today in East Bengal.

I will now refer to the Fourth matter which has a good deal to do with my resignation. The Cabinet has become a merely recording and registration office of decisions already arrived at by Committees. As I have said, the Cabinet now works by Committees.

There is a Defence Committee. There is a Foreign Committee. All important matters relating to Foreign affairs are dealt with by it. All matters relating to Defence are disposed of by the Defence Committee. The same members of the Cabinet are appointed by them. I am not a member of either of these Committees. They work behind an iron curtain. Others who are not members have only to take joint responsibility without any opportunity of taking part in the shaping of policy. This is an impossible position.

I will now deal with a matter which has led me finally to come to the decision that I should resign. It is the treatment which was accorded to the Hindu Code. The Bill was introduced in this House on the 11th April 1947. After a life of four years, it was killed and died unwept and unsung, after 4 clauses of it were passed. While it was before the House, it lived by fits and starts. For full one year the Government did not feel it necessary to refer it to a Select Committee. It was referred to the Select Committee on 9th April

1948. The Report was presented to the House on 12th August 1948. The motion for the consideration of the Report was made by me on 31st August 1948. It was merely for making the motion that the Bill was kept on the Agenda. The discussion of the motion was not allowed to take place until the February Session of the year

1949. Even then it was not allowed to have a continuous discussion. It was distributed over 10 months, 4 days in February, 1 day in March and 2 days in April 1949. After this, one day was given to the Bill in December 1949, namely the 19th December on which day the House adopted my motion that the Bill as reported by the Select Committee be taken into consideration. No

time was given to the Bill in the year 1950. Next time the Bill came before the House was on 5th February 1951 when the clause by clause consideration of the Bill was taken. Only three days 5th, 6th and 7th of February were given to the Bill and left there to rot.

This being the last Session of the present Parliament, Cabinet had to consider whether the Hindu Code Bill should be got through before this Parliament ended or whether it should be left over to the new Parliament. The Cabinet unanimously decided that it should be put through in this Parliament. So the Bill was put on the Agenda and was taken up on the 17th September 1951 for further clause by clause consideration. As the discussion was going on the Prime Minister put forth a new proposal, namely, that the Bill as a whole may not be got through within the time available and that it was desirable to get a part of it enacted into law rather than allow the whole of it to go to waste. It was a great wrench to me. But I agreed, for, as the proverb says "it is better to save a part when the whole is likely to be lost". The Prime Minister suggested that we should select the Marriage and Divorce part. The Bill in its truncated form went on. After two or three days of discussion of the Bill the Prime Minister came up with another proposal. This time his proposal was to drop the whole Bill even the Marriage and Divorce portion. This came to me as a great shock—a bolt from the blue. I was stunned and could not say anything. I am not prepared to accept that the dropping of this truncated Bill was due to want of time. I am sure that the truncated Bill was dropped because other and more powerful members of the Cabinet wanted precedence for their Bills. I am unable to understand how the Benaras and Aligarh University Bills, how the Press Bill could have been given precedence over the Hindu Code even in its attenuated form? It is not that there was no law on the Statute Book to govern the Aligarh University or the Benaras University. It is not that these Universities would have gone to wreck and ruins if the Bills had not been passed in this session. It is not that the Press Bill was urgent. There is already a law on the Statute Book and the Bill could have waited. I got the impression that the Prime Minister, although sincere, had not the earnestness and determination required to get the Hindu Code Bill through.

In regard to this Bill I have been made to go through the greatest mental torture. The aid of Party Machinery was denied to me. The Prime Minister gave freedom of Vote, an unusual thing in the history of the Party. I did not mind it. But I expected two things. I expected a party whip as to time limit on speeches and instruction to the Chief Whip to move closure when sufficient debate had taken place. A whip on time limit on speeches would have got the Bill through. When freedom of voting was given there could have been no objection to have given a whip for time limit on speeches. But such a whip was never issued. The conduct of the Minister for Parliamentary Affairs, who is also the Chief Whip of the Party in connection with the Hindu Code, to say

the least, has been most extraordinary. He has been the deadliest opponent of the Code and has never been present to aid me by moving a closure motion. For days and hours filibustering has gone on a single clause. But the Chief Whip, whose duty it is to economise Government time and push on Government Business, has been systematically absent when the Hindu Code has been under consideration in the House. I have never seen a case of a Chief Whip so disloyal to the Prime Minister and a Prime Minister so loyal to a disloyal Whip.

Notwithstanding this unconstitutional behaviour, the Chief Whip is really a darling of the Prime Minister. For notwithstanding his disloyalty he got a promotion in the Party organisation. It is impossible to carry on in such circumstances.

It has been said that the Bill had to be dropped because the opposition was strong. How strong was the opposition? This Bill has been discussed several times in the Party and was carried to division by the opponents. Every time the opponents were routed. The last time when the Bill was taken up in the Party Meeting, out of 120 only 20 were found to be against it. When the Bill was taken in the Party for discussion, 44 clauses were passed in about 3 1/2 hours time. This shows how much opposition there was to the Bill within the Party. In the House itself there have been divisions on three clauses of the Bill—2, 3 and 4. Every time there has been a overwhelming majority in favour even on clause 4 which is the soul of the Hindu Code.

I was therefore, quite unable to accept the Prime Minister's decision to abandon the Bill on the ground of time. I have been obliged to give this elaborate explanation for my resignation because some people have suggested that I am going because of my illness. I wish to repudiate any such suggestion. I am the last man to abandon my duty because of illness.

It may be said that my resignation is out of time and that if I was dissatisfied with the Foreign Policy of the Government and the treatment accorded to Backward Classes and the Scheduled Castes I should have gone earlier. The charge may sound as true. But I had reasons which held me back. In the first place, most of the time I have been a member of the Cabinet, I have been busy with the framing of the Constitution. It absorbed all my attention till 26th January 1950 and thereafter I was concerned with the Peoples' Representation Bill and the Delimitation Orders. I had hardly any time to attend to our Foreign Affairs. I did not think it right to go away leaving this work unfinished.

In the second place, I thought it necessary to stay on, for the sake of the Hindu Code. In the opinion of some it may be wrong for me to have held on for the sake of the Hindu Code. I took a different view. The Hindu Code was the greatest social reform measure ever undertaken by the Legislature in this country. No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it in point of its significance.

To leave inequality between class and class, between sex and sex which is the soul of Hindu Society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code. It is for its sake that I stayed on notwithstanding my differences. So if I have committed a wrong it is in the hope of doing some good. Had I no ground for such a hope connection to refer only to three of the statements made by the Prime Minister on the floor of the House, for overcoming the obstructionist tactics of the opponents? I would like in this n 28th November, 1949 the Prime Minister gave the following assurance. He said:

" What is more, the Government is committed to this thing (Hindu Code). It is going through with it."

" Government would proceed with that. It is for this House to accept a measure, but if a Government takes an important measure and the House rejects it, the House rejects that Government and the Government goes and another Government comes in its place. It should be clearly understood that this is one of the important measures to which the Government attaches importance and on which it will stand or fall."

Again on 19th December 1949, the Prime Minister said :

" I do not wish the House to think in the slightest degree that we consider that this Hindu Code Bill is not of importance, because we do attach the greatest importance to it, as I said, not because of any particular clause or anything, but because of the basic approach to this vast problem in problems, economic and social. We have achieved political freedom in this country, political independence. That is a stage in the' journey, and there are other stages, economic, social and other and if society is to advance, there must be this integrated advance on all fronts."

On the 26th September 1951 the Prime Minister said:

It is not necessary for me to assure the House of the desire of Government to proceed with this measure in so far as we can proceed with it within possibilities, and so far as we are concerned we consider this matter as adjourned till such time as the next opportunity—1 hope it will be in this Parliaments—offers itself.

This was after the Prime Minister had announced the dropping of the Bill. Who could not have believed in these pronouncements of the Prime Minister? If I did not think that there could be a difference between the promises and performances of the Prime Minister the fault is certainly not mine. My exit from the Cabinet may not be a matter of much concern to anybody in this country. But I must be true to myself and that I can be only by going out. Before I do so I wish to thank my colleagues for the kindness and courtesy they have shown to me during my membership of the Cabinet. While I am not resigning my membership of Parliament I also wish to express my gratitude to

Members of Parliament for having shown great tolerance towards me.
New Delhi,
10th October 1951

B. R. AMBEDKAR